

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – OCTOBER 25, 2010

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on October 25, 2010. Chairman Pazdera called the meeting to order at 7:35 p.m.

Those present:

Planning Commission: John Pazdera, Chairman
 Mark Fried, Vice Chairman
 Dean Dickson, Secretary
 Tony Bush, Member
 Karen Friedman, Member

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

#355 – REVISED/AMENDED FINAL PLANS FOR THE REGENCY AT YARDLEY
(FORMERLY OCTAGON CENTER/MATRIX)

Mr. Edward Murphy, attorney, was present with Mr. Greg Glitzer, engineer, and Mr. Greg LaGreca from Toll Bros. Mr. Murphy stated they were last before the Planning Commission in June to discuss the Sketch Plans and proposed modifications. He stated they then met with the Board of Supervisors in July, and the Board of Supervisors endorsed the changes which had been reviewed with the Planning Commission. Since then the Plans shown in June were engineered and re-submitted, and those drawings have been the subject of a number of reviews. Mr. Murphy stated they have received comments from the Historic Commission which were hand written on a Planning Commission document. He stated they also received a letter from Jim Yates dated October 10. He stated they have also received Police Department comments dated September 22, Mr. Majewski's comments dated 10/18, and the TPD review dated 10/21.

Mr. Murphy stated the comment from the Historic Commission suggests that the Plan will have an impact on the ruins of the Octagonal Schoolhouse; however, he stated the Applicant does not understand this comment and do not feel they will have any impact on those ruins. Mr. Glitzer stated the site of the Schoolhouse is off site relative to what Toll Bros. has acquired. Mr. Murphy stated the Historic Commission also suggested that the street name be changed from Old Oxford Valley Road to Octagonal Schoolhouse Lane, and he does not feel the Applicant has the ability to change the name of the street.

Mr. Bush stated he recalls a number of years ago there was something from the Pennsylvania Historic Museum Commission which indicated that they did not feel there was anything that needed to be preserved on site. Ms. Frick stated while she does not recall this letter, she could look into it. Mr. Bush stated he recognizes that this is not an issue for the Applicants since the ruins are not on their land. Ms. Frick agreed that the ruins of the Octagonal Schoolhouse are not on the Applicant's site. Mr. Majewski stated the Octagonal Schoolhouse is not on any property owned by Toll Bros. or Matrix.

Mr. Murphy noted the October 10 letter from Jim Yates. Mr. Murphy stated a portion of the review related to parking pertains to the Condo section of Matrix, and Toll Bros. does not own this section. He stated with regard to the items which do relate to their property, he does not feel they are still relevant. Mr. Murphy noted the single-family section which is the piece on Oxford Valley Road, under Access Item 1B, the width of the roadways was already determined as part of the original Settlement Agreement. Mr. Murphy stated Items C and D under the Access section have already been addressed by Mr. Majewski. Mr. Murphy stated in the next Section, Mr. Yates has asked for additional information, and the Applicant will provide this. Mr. Murphy stated under the Section for the Multi-Family, the comments are much the same.

Mr. Murphy noted the September 22 letter from the Police Department. He stated they will comply with the comments regarding street names and signage.

The October 18 letter from Mr. Majewski was noted, and Mr. Murphy stated they will comply with all comments.

Mr. Murphy noted the October 22 letter from TPD, and Mr. Murphy stated it appears that they have reviewed the Plan as if it had never been reviewed or approved. He noted the first Section lists "Requested Waivers;" and Mr. Murphy stated these Waivers were not "requested," but had been granted as part of the Stipulation and Settlement Agreement.

Mr. Majewski suggested that the Applicant change the wording to "Waivers Granted," and note the date they were granted. Ms. Frick suggested they put on it "Per Settlement Agreement," and the date on the Plan.

Mr. Murphy noted Item #1, and stated TPD is requesting the pedestrian trail that replaced the previously located roadway connecting the condo section with the single-family section be designed so that it can be used as emergency access, and Mr. Murphy stated since they have done this, he is not sure why they are commenting on this.

Mr. Murphy noted Item #2 dealing with the Big Oak Road design and stated they have not changed any of the Orth-Rodgers Plans, and these Plans were the basis for the HOP Permit.

Mr. Murphy stated they will comply with Items #3 through #7 and will provide the additional details requested.

Mr. Murphy stated they will comply with Item #8.

Mr. Murphy stated Item #9 is a Waiver which was already granted.

Item #10 was noted, and Mr. Murphy stated they will provide an explanation as to why they have the circular driveway. Mr. Glitzer showed the location of this on the Plan. He stated all of the channelized islands are part of the gated entrances with the card/key kiosk. He also noted the turn around lanes on the Plans. The turning radius is sufficient for trucks.

Mr. Majewski stated they should provide TPD with the type of signs they are going to have.

Mr. Murphy stated with regard to Item #11 there has been no change and this is part of the Settlement Plan and Stipulation. He stated Item #12 and the bulk of the remaining comments all deal with items that have not changed since the original approved Plan, Stipulation, and Settlement Agreement.

Ms. Friedman asked how sidewalks are being addressed through the community, and Mr. Glitzer showed on the Plan where sidewalks will be provided. He noted a number of driveways/alleys which are 24' wide and have no sidewalks and the marginal access stubs which are 18' wide with no sidewalks. He showed the location of the multi-use trails which will have stabilized shoulders for emergency access.

Mr. Murphy stated only the parts that are highlighted in green on the Plan have changed, and the rest in black and white are unchanged from the Stipulation and Settlement Plan.

Mr. Murphy stated the Plan does not clearly reflect, especially in the single section, that they have picked up slightly less than two and a half acres of woods that were previously going to be disturbed, but will now be preserved. He stated this area is principally along the Oxford Valley Road frontage, and Mr. Glitzer showed this location on the Plan. Mr. Glitzer also noted that they have relocated a stormwater feature from an area of woods to an area outside of the woods which provided another significant piece of woods. Mr. Glitzer also noted another area where Mr. Majewski had suggested they try to save some woods; and when they start construction and look at the grading, they may be able to preserve some additional woods.

Mr. LaGreca stated Mr. Majewski had also suggested that they meander the walking path through some of the stand of trees along Oxford Valley as opposed to cutting a straight path, and this will help save some trees as well.

Mr. Bush asked about the overall impact on green space comparing this Plan to the Plan presented in June, and Mr. Glitzer stated currently they have about the same amount of impervious but with the current Plan they have taken into account the largest product with options being provided on every lot, and designed the stormwater management system for this worst-case scenario. He stated realistically they do not feel that this will happen. He noted areas where they have saved impervious surface on the roads.

Mr. Pazdera asked if they have contacted TPD about their concerns with the review letter, and Mr. Murphy stated they have not. Mr. Pazdera encouraged the Applicant to contact them.

Mr. Dickson stated there is an existing traffic problem now turning off of Oxford Valley Road onto Sugarman, and the turn lane is inadequate for the current volume of traffic. He asked if Toll Bros. is planning on roadway improvements to Oxford Valley Road to compensate for the additional traffic, and Mr. Murphy stated they are. He stated they have asked the Township solicitor's office to prepare the Development Agreement for the boundary road improvements since they would like to start them now even before the Amended Plan is approved. He stated as soon as the Township solicitor's office develops those Agreements, they are ready to get the work started as they would like to show the public some renewed activity and let them know the project is proceeding.

Mr. Dickson stated they are dealing with a number of different owners putting up different projects in the area, and it would be helpful if the cost of this were shared among Toll and the other developers. Mr. Murphy stated this arrangement has already been made, and the money to do the improvements to Big Oak Road and Oxford Valley Road has already been posted by both Matrix and Toll Bros. as part of the closing.

Mr. LaGreca stated Toll will be the developer doing the work and significant improvements will be done.

Ms. Friedman asked how they will phase the project. Mr. LaGreca stated they will start the singles first, and the carriage homes will be at least three years out. They will also start the club house and the amenity area immediately so that it will be a marketing feature for the community. He showed on the Plan the various phases of construction. He also showed the location of construction entrances. Ms. Friedman asked if stormwater management issues are being addressed per phase so that if construction were to be arrested at any point in time, what is existing could stand on its own; and Mr. LaGreca stated this is true. He stated they will make sure that each section stands on its own.

Ms. Friedman asked for a definition of “carriage house,” and it was noted these are the same as townhouses. Mr. LaGreca stated they are attached products. He stated one change is the establishment of a right-handed house versus a left-handed house, and this was clarified in the Plans to try to eliminate as many water and sewer conflicts as possible. Ms. Friedman asked if there are any apartments in this Section which are two to three stories tall, and Mr. LaGreca stated there are not in their Plans. He stated that is in the Section of land that Matrix still owns. He showed this location on the Plan. He noted the significant wetland/woodland buffer between that area and the project Toll is working on. He stated the only connection is the emergency access and a sewer and water connection.

Ms. Friedman stated the original Plan had a certain number of homes for the entire site, and Mr. Murphy stated it was 600. Ms. Friedman stated she understands that there is now a reduction, and asked if it is for the site as a whole or just the parcel bought by Toll. Mr. Majewski stated they are increasing the number of units because they were able to eliminate the loop road that ran parallel to Oxford Valley Road. Mr. Bush stated they were able to pick up twenty units. Mr. LaGreca stated the Settlement Agreement allowed for 200 units per product – 200 singles, 200 apartments/condos, and 200 town homes. Ms. Friedman stated Toll Bros. did not purchase the entire Plan, and Mr. Murphy agreed. Mr. Murphy stated the Agreement states that Matrix agrees to submit a Plan for no more than a maximum of 600 residential units comprised of approximately one third singles, one third town homes, and one third multi-family. Mr. Murphy stated their Plan does not exceed those limits for the singles or the town homes, and they are not touching the condos so they are within the limit for the mix of residential units contemplated by the Stipulation Agreement. Mr. Murphy stated their allocation is 379, and the allocation could have been a maximum of 400. Mr. LaGreca stated Matrix cannot add any more than 200 condos for their land.

Ms. Friedman asked if Matrix will do the condo and Toll Bros. will do the others; and Mr. LaGreca stated Toll Bros. only purchased the single home and carriage house sections and Matrix maintained the condo/apartment section as well as the office space that is being developed. Mr. Murphy stated he does not believe Matrix has made a decision about what they will do with the condominium section. Mr. Dickson stated it is possible that Toll may build that as well, and Mr. LaGreca stated Toll Bros. did evaluate it as part of their purchase and determined from a pricing standpoint that they would not purchase that portion at this time. He stated he cannot speak to what they may do in the future.

Mr. Dickson stated he understands the Middletown part is not under agreement; and Mr. Murphy stated it is not under agreement, but the Middletown portion is fully engineered and is currently under review by the various Boards and Commissions in Middletown Township for 143 market rate town homes. He stated the Settlement Agreement contemplated that Matrix was to approach Middletown about changing their

Ordinance to permit age-qualified town homes to be built there, but Middletown Township elected not to do that and wanted market rate product built there; and this is what Matrix has designed and submitted for review. He stated they hope the Plans will be approved in the next sixty days since they were submitted in August.

Mr. Pazdera noted the letter from Geoff Goll, and Mr. Donaghy stated he has reviewed it but has not discussed it with him. He stated he is not sure if Mr. Truelove has discussed this letter with Mr. Goll. Mr. Donaghy asked if Mr. Murphy has seen this letter, and Mr. Murphy stated he has not. Mr. Donaghy stated in the letter, questions were raised as to whether or not the submission of a Revised Plan after the prior approval of a Plan requires that the Revised Plan be considered in accordance with subsequently-adopted Ordinances of the Township. He stated there was also a question whether or not Toll was bound by the earlier Stipulation; and he stated Toll is bound to the Stipulation as the Stipulation specifically states it is binding on all successors, assigns, and Parties to that Agreement. Mr. Donaghy stated whether or not it is necessary to treat this as an entirely new Plan is an “iffy” question. He stated there are some definitions in the SALDO as to what constitutes a new Plan which would have to go through a whole new approval process. Mr. Donaghy stated they must start with the premise that Toll has an Approved Plan, and they could build it the way it has been approved without any changes.

Mr. Donaghy stated it is a technical question as to whether or not this is a new Plan, and there are some provisions in the SALDO about the fact that if there are substantial changes to the street lay out, etc. it may constitute a new Plan. Mr. Donaghy stated they must also consider that there is some concern over the fact that there is a Stipulation Agreement, and he feels there have been no real changes in the requirements under the Stipulation, and he believes that they are still within their five-year protective period from the time of Preliminary Approval of the Plans which would arguably mean that they are entitled to consideration under the Zoning Ordinance that existed at the time of the Application. He stated if there was some confusion with this, the Board of Supervisors could grant a Waiver from the new Plan requirements since it is part of the SALDO and not the Zoning Ordinance. Mr. Donaghy stated this would depend on whether or not the Supervisors felt this provision was consistent with what it intended for any improvements as a result of this Application. Mr. Donaghy stated they must remember that they have an Approved Plan; and unless the Township agrees to modify that Plan, the Applicant could proceed with the Approved Plan.

Mr. Murphy stated this is why they submitted the Sketch in July to make sure everyone was comfortable with what they were doing; and at the time, everyone agreed that the changes they had proposed were better than the original Plan.

Mr. Pazdera stated they have not received a formal review from the Environmental Advisory Council since the EAC was waiting for a determination from the Township solicitor. Mr. Donaghy stated he just saw the memo from Mr. Goll recently, and he feels the EAC will have to make a determination with regard to the submission for review. Mr. Pazdera stated he would like to see a review from the EAC. Mr. Murphy asked if the EAC was in existence when the original Plan was approved; and Mr. Majewski stated while they were in existence, they did not have any jurisdiction over review of Plans at that time. Mr. Donaghy stated he does feel the changes in the review procedure would apply to any subsequent submissions, and the EAC should review the Plans now; however, this does not change any protection that the Applicant has on the substitutive provisions.

Mr. Fried asked if the EAC review would be limited to the changes, and Mr. Donaghy stated he feels they would be limited to the changes. Mr. Bush stated they did do a review; and one of the items they addressed was the amount of fill. Mr. Bush stated this has now been lowered, and he feels they would be in favor of this change. Mr. Murphy stated there is a huge difference on the amount of fill, and it is now much less. Mr. Murphy stated he also feels they would be in support of the protection of additional woodlands.

Mr. Murphy asked if the Planning Commission would be willing to make a recommendation subject to receipt of a review from the EAC. Mr. Pazdera stated he would also like clarification on the TPD letter. Mr. Murphy stated when the Applicant was present in June and July they advised that they were anxious to start the project, as was the Township so that they could generate some additional revenues from the project; and he would hope that the Board would help them move the project forward.

Ms. Friedman stated in 2006 there was discussion about water flow from Brock Creek to Mill Creek. Mr. Majewski stated the Plans do have improvements in that they are preserving more woods and the stormwater management system is better the way they have laid it out. Ms. Friedman stated the Planning Commission did not have a lot of time to review this as there was a timing issue and there was an Agreement in Court. Mr. Majewski stated it is his understanding that they worked out all of the issues during the process to get the Final Plan Approval. Mr. Majewski stated he is in favor of the changes they have made for the roads as well. He stated this is a better Plan on many levels.

Mr. Pazdera stated the only issues he has are clearing up the TPD letter and he would like to see something from the EAC. Mr. Pazdera stated this matter will be put on the Agenda for the next meeting of the Planning Commission and he will send a letter to the EAC that he needs to have a letter from them before that meeting. Ms. Frick stated the EAC was told that they had to have their review letter in by last Friday. Ms. Frick stated the response they received from the EAC was that they were not going to do a review until

they received clarification on the legal issue from the Township. Mr. McLaughlin stated he feels Mr. Truelove had indicated that the issues Mr. Goll was raising were not valid, but asked Mr. Donaghy to verify this. Mr. Donaghy stated he feels that what has been presented by the Applicant is consistent with the Stipulation and Settlement Agreement. Mr. Fried stated he felt the issue with the EAC was whether they should review this under the old rules or the new rules, and Mr. Donaghy stated his answer would be it should be reviewed under the rules that were in place at the time of the approval of the Plans. Mr. Fried asked if it is fair for the Planning Commission to request a review from the EAC under the old rules before the next Planning Commission meeting so that they can move forward. Mr. Pazdera asked that Mr. Donaghy provide the EAC with direction from his office, and the EAC will be asked that they respond by Wednesday, November 3 prior to the next Planning Commission meeting based on the direction by Mr. Donaghy. Mr. Murphy was asked to work with TPD. This matter will be on the next Planning Commission meeting to be held Monday, November 8.

OTHER BUSINESS

There was further discussion about the memo which was received by members of the Planning Commission by Mr. Goll. Mr. Bush stated he is concerned that if an individual Planning Commission member responds to a letter written to the Commission by either a member of the public or a member of another Township Board, they may be running afoul of the Sunshine Act. He stated he also does not feel that individual members of other Commissions should be e-mailing the Planning Commission. Mr. Pazdera stated he has already asked the EAC not to do this and advised them that all e-mails should be put through Ms. Frick. Mr. Bush stated he feels that there should be an automatic response that the Planning Commission cannot respond, and in the future all correspondence should go through Ms. Frick. Ms. Friedman stated they could also indicate that they would discuss it at their meeting and make an appropriate response after that time. Ms. Frick stated she was not copied on this letter from Mr. Goll to the Planning Commission.

Mr. McLaughlin stated there have been problems with Mr. Goll contacting the Township solicitor directly, and the Solicitor has been advised to disregard these requests until they go through the proper channel which is the Chairman asking the Supervisor liaison if the Township solicitor can be contacted on a specific issue. Mr. Bush stated he still feels there needs to be a standard response to anyone who sends these kinds of e-mails advising them that they should go through Ms. Frick. Ms. Friedman stated they should also be advised that there will be no comment from the Planning Commission until they discuss it at a meeting.

Ms. Frick stated in the future packets are going to be done through e-mail. She stated it is very difficult to keep a handle on the correspondence from the other Boards and Commissions. Ms. Friedman stated everything still needs to go through Ms. Frick as she is the point person. Mr. Pazdera stated they have been asking the EAC to do this for a long time, and they still leave her out. Mr. Bush stated he feels there should be an automatic response. Mr. Pazdera stated he feels the Township Manager needs to put out a memo to all Boards. Mr. McLaughlin stated there have been problems with some of the other Boards contacting the Township engineer and solicitor directly. Mr. Dickson suggested that Mr. Stainthorpe, as the EAC liaison, advise them that they need to go through him to request something from the Township engineer or solicitor.

Mr. McLaughlin stated he agrees that there needs to be a standard procedure that letters go to Ms. Frick first and she can then forward it to the Planning Commission. Mr. Dickson stated he feels that if it has not gone through Ms. Frick, it does not exist. Mr. McLaughlin stated the Township engineer and solicitor know that they cannot do any work requested by a Board or Commission unless it is from the Committee Chair working with the Supervisor liaison. Mr. Bush stated it is not just contacting the professionals, it is also contacting the Planning Commission directly, and it should go through Ms. Frick.

There being no further business, Ms. Friedman moved, Mr. Dickson seconded and it was unanimously carried to adjourn the meeting at 8:55 p.m.

Respectfully Submitted,

Dean Dickson, Secretary