

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – JUNE 27, 2011

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on June 27, 2011. Mr. Truelove stated at the current time there is not a quorum. He stated two of the items are Sketch Plans which are informal submissions which they can discuss even if there is not a quorum present. He stated if a third member arrives, they can formally convene the meeting and can then discuss Dogwood Drive.

Those present:

Planning Commission: Mark Fried, Chairman (joined meeting in progress)
Dean Dickson, Vice Chairman
Tony Bush, Secretary

Others: Nancy Frick, Director Zoning, Inspection & Planning
David Truelove, Township Solicitor
James Majewski, Township Engineer
Ron Smith, Supervisor Liaison

Absent: Karen Friedman, Planning Commission Member
John Pazdera, Planning Commission Member

#611 – JORGE GOMEZ – SKETCH PLAN DISCUSSION

Mr. Edward Murphy, attorney, and Mr. Eric Clase, were present. Mr. Murphy stated the property is on the north side of Oxford Valley Road, and it is slightly less than two acres in size located in the R-3M Zone. Mr. Murphy stated the Plan submitted contemplates subdivision of the parcel into one additional lot. He stated there is an existing two-story dwelling on the property located near Oxford Valley Road, and the plan is to retain that house on a lot that would be slightly less than one half acre in size. The balance of the lot of almost one and a half acres would be devoted to a flag lot, and a home would be constructed on the flag to the rear of the existing dwelling. Mr. Murphy stated the two homes would then share a common driveway so there would be a single access point off of Oxford Valley Road. He stated they would share the driveway for a short distance of approximately 40' to 50', and the access to the existing dwelling would come off that shared driveway. The existing gravel driveway located on the north side of the lot would be removed.

Mr. Fried joined the meeting at this time.

Mr. Murphy noted the Remington & Vernick review letter dated 6/6/11 commenting on the Sketch Plan with nine items listed. Mr. Murphy stated his only concern is with the first two items, and he has had a chance to briefly discuss these issues with Mr. Majewski where there is a reference made to the provisions of the Ordinance dealing with flag lots. Mr. Murphy stated his view is that the configuration as shown on the Sketch does meet the requirements for the flag which requirements, regardless of the Zoning District in which it is in, that the flag lot be at least a builder's acre of 40,000 square feet; and he stated they do have that dimension exclusive of the "flag pole."

Mr. Murphy stated in all other respects he feels the Plan does comply. He stated Items #3 through #9, they will address during the course of the Preliminary submission.

Mr. Majewski agreed that Mr. Murphy is correct with respect to Item #1, and the Planning Commission can disregard this as it is not applicable. He stated with regard to Item #2, he does feel the setback on Lot #2 needs to have a 60' rear yard setback which he feels is easy to achieve on this lot. He stated they also need to correct the water course to be 50'; and other than this, he does not feel there are any problems.

Mr. Majewski stated in the past there have been concerns with the idea of a shared driveway; and while it is safer to have one shared driveway and results in less impervious surface, it can be a problem if the neighbors fight. Mr. Murphy stated in other Municipalities where shared driveways are more common, they use a Declaration of Covenants and Restrictions for shared use common driveways; and he would be willing to provide a copy of this to the Township solicitor for his review. Mr. Truelove stated this would be filed of record in Doylestown so that people are on notice when they buy the property, and Mr. Murphy agreed. He added it has been time tested and satisfactory in terms of minimizing neighbor issues and even discusses the number of inches of snow which require that the driveway be plowed. Mr. Majewski stated a Note to this effect should also be on the Record Plan, and Mr. Murphy agreed.

Mr. Truelove stated that Mr. Fried arrived during the discussion, and matter can now formally be called to order.

Mr. Fried called the meeting to order at 8:05 p.m.

APPROVAL OF MINUTES

Mr. Bush moved, Mr. Dickson seconded and it was unanimously carried to approve the Minutes of 5/23/11 as written.

CONTINUATION OF DISCUSSION OF #611 – JORGE GOMEZ SKETCH PLAN

Mr. Fried asked when they expect Preliminary Plans to be submitted, and Mr. Murphy stated it should be in sixty to ninety days. Mr. Murphy stated no formal recommendation is needed at this time since it is a Sketch Plan. He stated they will make a similar brief presentation before the Board of Supervisors; and once they have all the comments, the engineer will generate the Preliminary Plans that will be submitted in the normal course back to the Planning Commission. Mr. Fried asked if there are any special approvals that will be necessary, and Mr. Murphy stated he is not aware of any at this time. Mr. Fried asked when they expect to begin the project, and Mr. Murphy stated he expects that it could be started in the spring of next year.

Mr. Robert Johnson, 1466 Oxford Valley Road, asked about the intention of the developer as to whether it will be for sale or used by the family. Mr. Murphy stated he does not know this at this time, but he could provide an answer for this the next time it is presented.

Ms. Lillian Geaney, 440 Lenape Lane, stated she believes she lives behind where the structure will be going; and she asked how far it will be from her property. Mr. Majewski stated her property is approximately two lots over to the west from this property and it should be 150' to 200' away.

#562-A – DOGWOOD DRIVE (A/K/A HARMONY LANE) PRELIMINARY PLAN DISCUSSION AND MOTION

Mr. Murphy, attorney, was present with Mr. Eric Clase. Mr. Murphy stated this was last presented in May when Mr. Glitzer and Mr. Clase were present representing the Applicant. At that meeting, the matter was tabled/postponed pending a request for further revision. Mr. Murphy stated when he heard the outcome, he was somewhat distressed because the last time there was a public presentation of this Plan last October, the principal issue that was discussed, and one of the principal issues that the Planning Commission considered in May, was the extent of the extension of the public sewer to address existing failed systems in some of the homes in the immediately-surrounding area. Mr. Murphy stated he had made a commitment to the Board of Supervisors last October to meet with the Township to try to come up with something that was fair and reasonable to the developer and the Township to try to identify and provide connections to those problem lots. Mr. Murphy stated he made it clear then that what they thought they could when they had ten lots was different than what they could do now that they have five lots. Mr. Murphy stated the extent of the public sewer extension remains an issue that he feels will ultimately fall within the province of the Board of Supervisors to decide.

Mr. Murphy stated it was his view that all other items that were of a technical nature that were in the most recent review were items they would comply with and had been discussed extensively with Mr. Majewski and the Board of Supervisors over the years that this Plan has been pending. Mr. Murphy stated he felt the matter was ready for a recommendation from the Planning Commission to move it to the Board of Supervisors so that they could deal with the sewer issue. He stated he does not feel the Plan requires any further revisions. He stated they are requesting the Planning Commission to make a recommendation to the Board of Supervisors this evening and to move it forward. He stated he understands that the Planning Commission does not have to make a recommendation because the time is not up; but he added that when the time is up, he has advised the Township staff that he was not inclined to provide any more Extensions as he feels the matter is ready to move forward.

Mr. Bush stated he feels there were two other items other than the sewer hook up issue that were unresolved. He stated one of these was the intersection off of Dogwood Drive that was originally a T-intersection and then a sweep. He stated the Planning Commission's position was that they preferred to see a T, but they never saw any Plans showing the T-intersection. Mr. Murphy stated the Plans do show a T-intersection. Mr. Bush stated this did not come back to the Planning Commission, and the last Plan they saw had the sweep. It was noted that this was incorrect, and when the Planning Commission last saw the Plans in May, they did show the T-intersection. Mr. John Flynn, 4 Dogwood Drive, stated when the Plans were last presented in May, did show the T-intersection.

Mr. Bush stated the other issue had to do with rest of Dogwood Drive as to who owns it now and who will own it in the future; and the developer was to look into who currently owns it. Mr. Murphy stated he feels they had done this, and it was left to Mr. Truelove's office to research this. Ms. Frick and Mr. Majewski stated they never received any further information. Mr. Bush stated he felt the Applicant was to look into this, and they never saw anything further. Mr. Truelove agreed to work with Mr. Murphy on this. Mr. Majewski stated he believes that the Board of Supervisors was inclined to accept Dedication. Mr. Bush stated some residents were present at a meeting on this several years ago and advised that the Township plows stop halfway down the road. Mr. Murphy stated he felt that the Board was inclined to put those issues of maintenance, repair, and upkeep to rest and make it an accepted-Township Road. Mr. Truelove asked Mr. Flynn if the balance of the street is plowed by the collective efforts of the neighbors, and Mr. Flynn agreed. Mr. Murphy stated this will ultimately be a Township decision, and the Applicants will provide whatever Deed research they have.

Mr. Murphy stated if the Planning Commission makes a recommendation it should be subject to further review by the Township with respect to the ultimate disposition, ownership, and maintenance of Dogwood Drive.

Mr. Fried asked about the outstanding sewer issues, and Mr. Murphy reviewed his discussions over the years with Mr. Hoffmeister where the Applicant made a proposal for extensions, and Mr. Hoffmeister wanted the area they were proposing doubled or tripled in size running down Delaware Rim so that they would be in a position to provide other potential sewer hook ups for other potentially, problematic properties. Mr. Murphy stated there is a cost associated with that, and the Applicant felt it was too much given the fact that there were only five lots as opposed to ten. He stated they had been more inclined to work with Mr. Hoffmeister to provide more extensions when they had ten lots over which to amortize the cost. Mr. Fried asked how far they are willing to go with the sewer extension, and Mr. Murphy stated there is a Plan that has been presented to Mr. Hoffmeister which he has had for months. Mr. Truelove stated this was also presented at the last Board of Supervisors meeting when this development was discussed. Mr. Murphy stated they have agreed to work this out, but this has not yet been resolved.

Mr. Truelove stated there is some disagreement as to what the term “adjoins” means in Section 178-104 of the SALDO which relates to this issue. Mr. Fried asked who will ultimately make this decision, and Mr. Murphy stated it will be the Board of Supervisors. Mr. Murphy stated they are all aware that DEP is getting more insistent that the Township affirmatively provide solutions to properties that have long had failing systems. He stated if there is not some accommodation reached, the Township may be forced to pay for all of this itself without any contribution; and they are trying to come up with something that makes sense for everyone.

Mr. Bush stated he understands the “adjoining” properties would be on Delaware Rim, and Mr. Majewski stated if they applied the written words of the Code, it would require that the sewer be extended over to Spur Lane so it would have to continue down Dogwood Drive, underneath the creek, and then out to Spur Lane. He stated there is also a property on the south side of the Subdivision that also adjoins the Subdivision. Mr. Majewski showed these properties on the plan. Mr. Murphy noted there would be an impact on the woods and the creek to run the sewer line as requested by the Township. Mr. Majewski stated the Applicant feels that what is being requested by the Township is too costly for five lots. He stated they are trying to give the Applicant some relief that made sense but would help the Township fulfill its Act 537 obligations going forward.

Mr. John Flynn, 4 Dogwood Drive, asked who will define “adjoining properties,” and Mr. Majewski stated the definition is in the dictionary and it means immediately adjacent to. Mr. Flynn asked about the definition in the context of the Township. He stated his property and all the properties on Dogwood Drive are adjoining Chanticleer, and Mr. Majewski agreed. Mr. Flynn asked why this was not enforced when Chanticleer was built, and Mr. Majewski agreed that this a good point. Mr. Majewski stated he does not know why this did not happen, and it is an interpretation issue.

Mr. Bush asked about the last three or four properties on Dogwood Drive where ownership of the road is in question and stated they are potentially adjoining properties with that interpretation; and Mr. Majewski stated they are extending sewer down Dogwood to make that available for those homes.

Mr. Majewski stated they must go back to the Board of Supervisors to get to a decision as to what makes sense to get the best sewer service to the area.

Mr. Truelove stated the term “adjoins” is not defined anywhere in the Ordinance itself.

Mr. Chris May, 19 Delaware Rim Drive, stated he would like to have a speed bump in the road because of the speed of drivers going past his home.

Mr. Bush moved, Mr. Fried seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Plan last revised 2/2/11 subject to resolution of the issues related to the sewer between the Township and the developer and ownership of Dogwood Drive to the west of Delaware Rim Drive, and deferral of the issue of core borings to Final Plan subject to compliance with the Remington & Vernick review letter dated 5/16/11, the sewer letter dated 4/1/11, and the Bucks County Planning Commission letter dated 4/15/11.

#612 – ST. IGNATIUS CHURCH INFORMAL SKETCH PLAN DISCUSSION

Mr. Edward Murphy, attorney, and Mr. Eric Clase were present. Mr. Murphy noted the Sketches which have been presented. He stated St. Ignatius has recently entered into an Agreement of Sale with his clients to sell a portion of their overall tract, principally that portion which fronts on Sandy Run Road. Mr. Murphy stated looking at the overall view, the complex of buildings that make up St. Ignatius which would be the Rectory, the Church, and the School are to the right and have substantial frontage on Reading Avenue. Mr. Murphy stated there is a cross-hatched triangular area to the back in a wooded area adjacent to the railroad tracks that is proposed to be retained by the Church. The balance of the Church holdings which are labeled to the left of the cross-hatched triangular area consolidated the remaining lands as well as the eight-lot Subdivision that is shown immediately to the north of that would be what would be sold under the proposed Agreement of Sale. He stated ultimately the Church would retain the piece that fronts on Reading Avenue that backs up to the Railroad as well as the triangular piece. He stated the reason why the triangular piece is to be retained by the Church as opposed to being sold off is because under an earlier Zoning Hearing Board Decision from 1992, the Church obtained relief to permit a maximum impervious surface ratio of 28.15%; and so as not to violate that relief, the triangular area would be added to the Church complex so that the net resulting impervious would still be equal to or less than that number.

Mr. Murphy stated the balance of the property would then be sold, and the eight lots would be configured either in the fashion shown on the Plan or in something akin to it. He stated the remaining consolidated lands along Sandy Run Road would be essentially open space associated with the Subdivision. He stated what would be seen along Sandy Run would be the eight lots and the open space.

Mr. Murphy stated the reason the property was originally acquired by the Church in a much earlier Plan that was part of the Zoning Hearing Board Decision, there was an access road contemplated that would have extended from the Church complex through the cross-hatched area and out to Sandy Run Road to provide either a by-pass or a “relief valve” for parishioners on Sundays when it was crowded. He stated over time the anticipated increase in the Parish has not materialized; and they do not feel that given the nature of the Parish at this point, that it would ever be used. He stated the Church is trying to make up some shortfalls, and these factors have given rise to the proposed sale.

Mr. Fried asked the total amount of acreage being sold, and Mr. Clase stated it is 10.45 acres. Mr. Murphy stated they are not creating a non-conforming situation by proceeding with the Plan. Mr. Truelove stated this is basically a Lot Consolidation and Subdivision at the same time.

Mr. Majewski noted Lot #1 is all wooded, and its side yard would be in the back yards of Lots #2 and #3. He stated if they eliminated this lot and put it in the cleared area that is below the consolidated remaining lands, they would clear less woods and also Lots #2, #3, and #4 would have just woods all behind them, and where Lot #1 would also be a Lot with woods behind it. Mr. Majewski stated Ms. Frick has noted that they need to check the Zoning Hearing Board Decision from 1992.

DISCUSSION OF LETTERS DATED 4/8/11 AND 5/4/11 FROM BARBARA KIRK, ZONING HEARING BOARD SOLICITOR

Ms. Frick stated these are items that the Zoning Hearing Board would like to have considered. She stated she does not feel a decision needs to be made this evening, but is something that the Planning Commission needs to start to consider. Ms. Frick stated Variances and Special Exceptions expire within six months, and there has been previous discussion about extending this to one year. She stated after six months, the Applicants have to constantly go back to the Zoning Hearing Board and ask for another six-month extension. She stated most Townships do give a one year time limit on Grants of Variance and Special Exceptions.

Mr. Bush asked what would be the impact if there is ongoing litigation, and Mr. Truelove stated it is “frozen in time” pending the litigation.

Ms. Frick stated the other issue involves impervious surface. She stated in the late 1970s impervious surface was done by building coverage. She stated they re-did this in 1987 after approximately three years of discussion involving the Township Solicitor, the Planning Commission, and Zoning Hearing Board. She stated the Township engineer went out to the developments and determined an average of what the basins could withstand. She noted particularly Yardley Hunt which had 15% building coverage, and they wanted to see if the basins could withstand another 3% so that it would be 18% impervious surface per lot versus 15%. She stated it was too difficult to determine the overall development after residents had already put in additions and alterations. She stated this is how they reached 18% impervious surface for the older developments. She stated the basins were designed to handle 15% building coverage, and the residents were given an additional 3% which they felt was fair and would allow homeowners to add a patio, addition, etc. She stated if they want to go over this amount, they have to come to the Zoning Hearing Board; and the Zoning Hearing Board is now asking that this be reviewed. Ms. Frick stated a lot of thought did go into the impervious surface charts.

Mr. Majewski stated the other issue the Zoning Hearing Board has raised under Item B of the letter discusses the use of mitigating stormwater management; and if an Applicant uses such a feature, they are asking why credit cannot be given for this. Mr. Majewski stated some people want to put in porous pavement for their driveways, and they are advised that this does not count from the Zoning perspective; however, they do consider the effect on stormwater of impervious coverage. Mr. Truelove stated the issue is whether they can get credit for it or whether they have to request a Variance.

Mr. Majewski stated his concern is that some resident may want to put in a basketball court in their yard entirely in porous pavement, and the next-door neighbors would then have wall-to-wall pavement in their yard. He stated he feels many people moved to the Township so that they can see green around them and not have the entire next-door lot covered with impervious surface.

Mr. Majewski provided a chart this evening that shows the current impervious surface requirements on the right. He stated the problem is mainly on the lots in developments like Yardley Hunt where one quarter to a third of those lots are already over in impervious coverage without having added anything additional, and he feels the numbers were set a little too low in certain neighborhoods. He stated he was looking for a way to do this so that the residents do not constantly have to go to the Zoning Hearing Board if they want to add a patio or a shed. Mr. Majewski stated he has provided a proposed chart as to how they could work this out adding some impervious surface for the smaller lots that are hit the hardest, and taking it away from the larger lots. He stated 15% of a one, two, or ten acre lot would be a lot of impervious surface; and he is not sure they should

allow this in the Township. He stated the residents who are on the smaller lots cannot put up even a shed. Ms. Frick stated she feels that it makes sense that if there is a smaller lot, they would get less than someone who purchased a larger lot.

Mr. Majewski stated a ten acre lot could have almost two acres of coverage on the lot and still be in compliance with the current Ordinance versus if you have a half acre lot, you could only have 3,600 square feet which is barely enough room for a house and a driveway; which is why almost every lot in the older developments has to come in for a Variance.

Mr. Majewski stated currently the Ordinance has a step up and down schedule; and if you have a lot that is 15,000 square feet, you are allowed to have a 24% which is 3,600 square feet. If you have a lot that is one square foot bigger, you lose 900 square feet of your property. Ms. Frick stated they did have to determine a breaking point. Mr. Majewski stated while he is not recommending that they use the exact numbers he has shown, he would recommend that there be a more linear scale that as you increase, you get more impervious coverage and not so that if you have a lot size that is one foot bigger that you lose 900 square feet of your property.

Mr. Fried stated he is confused as to what burden they are trying to relieve.

Mr. Fried asked if they are trying to relieve the Zoning Hearing Board's burden.

Mr. Majewski stated it is also the residents' burden as if they have a lot that is 15,000 square feet they are usually okay at 3,600 square feet; but if you have a lot that is 15,001 square feet, you have to go the Zoning Hearing Board and spend \$500 minimum just to put up a shed. Mr. Majewski again noted the scale on the right on the existing condition, where there are number of steps. He stated between 12,500 and 12,501 you lose 500 square feet. Mr. Majewski stated he feels they should make it linear.

Mr. Fried asked if they have an idea how many people come in during the year to deal with this issue, and Ms. Frick stated she can provide this information. Mr. Truelove stated the vast majority of cases they get deal with impervious surface. Mr. Majewski stated even if they wish to replace a shed with a larger shed, they would have to spend \$500 to go to the Zoning Hearing Board; and what many people do is not get the Permit and do what they want. Mr. Truelove stated if they then get caught by Code Enforcement, they get fined and would have to go to Court. Mr. Majewski stated he feels it is a hardship on the property owners and makes no sense. Mr. Majewski stated while this request is coming from the Solicitor of the Zoning Hearing Board, several residents have made this same presentation at Zoning Hearing Board meetings that it makes no sense; and if they had one square foot less of property, they could build a huge shed.

Mr. Fried stated he feels they need to discuss this further, and he asked if they should allow those concerned about this to be advised that this is being discussed. Mr. Fried stated the Township previously studied this for three years and probably spent a lot of money on this, and he is concerned about over-turning things. Ms. Frick stated at that time, they did the best they could to come up with something they felt would work. She stated they had to put some controls over stormwater management. She added that the Township's Ordinance is used by other Townships as a model Ordinance. She stated she agrees they should look again at the older developments. She stated they need to know if the basins would work if they allow additional impervious surface. She stated the prior engineers did go out and look at all of the detention basins to make sure they could all withstand the stormwater if each lot in the development went to the maximum. Mr. Majewski stated he feels the problem is that they took an average; however, with an average probably 25% of the properties in Yardley Hunt are over which requires a Variance for anything the homeowners want to do.

Mr. Majewski stated he has presented these numbers on the chart for discussion purposes, and they should review this further.

Mr. Bush asked about the porous pavers and he asked specifically about gravel driveways. Ms. Frick stated currently they consider gravel to be impervious. She stated while decks are not impervious, if a plastic barrier is placed underneath, it becomes impervious. Mr. Majewski stated any driveway that you can drive upon is mostly impervious. He stated the other problem is that if you have a new homeowner move in and they see a gravel driveway, they would just pave over it and would not feel they would need a Permit. He stated this is another reason why gravel driveways are considered impervious. Ms. Frick stated the Ordinance does read that a driveway has to be paved with a hard surface.

Mr. Majewski stated what is being suggested is that if you put in some sort of stormwater management facility, they could get this by right. He stated they are also considering dry wells, seepage beds, and porous pavements; and if they allow people to have some extra impervious surface, the stormwater should be mitigated. Mr. Majewski stated the Zoning Hearing Board is concerned that they are requiring the residents to come before them and they are Granting them a Variance for what they already have. He stated the Zoning Hearing Board usually approves the Variances up to a certain point above what is permitted provided they do some stormwater management; and they are suggesting that this be put in the Code so that the residents do not have to pay \$500 to go before the Zoning Hearing Board. Ms. Frick stated she is concerned that new homeowners would not maintain these stormwater management features going forward if it is not granted by the Zoning Hearing Board with the Order going with the property. Mr. Truelove stated it would have to be part of the Permit.

It was agreed to continue to discuss this matter again in the future.

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There being no further business, Mr. Dickson moved, Mr. Fried seconded and it was unanimously carried to adjourn the meeting at 9:05 p.m.

Respectfully Submitted,

Tony Bush, Secretary