

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – JANUARY 14, 2013

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on January 14, 2013. Mr. Dickson called the meeting to order at 7:35 p.m.

Those present:

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

Others:                            Nancy Frick, Director Zoning, Inspection, & Planning  
   John Koopman, Township Solicitor  
   Mark Eisold, Township Engineer  
   Maryellen Saylor, Township Engineer  
   Kristin Tyler, Supervisor Liaison

Absent:                             Mark Fried, Planning Commission Member

**ELECTION OF CHAIRMAN, VICE CHAIR AND SECRETARY OF THE PLANNING COMMISSION FOR 2013.**

Mr. Dickson turned the meeting over to Mr. Koopman who called for nominations for Chairman of the Planning Commission for 2013. Mr. Dickson moved and Mr. Pazdera seconded the nomination of Tony Bush. There were no further nominations, and the Motion carried unanimously to elect Tony Bush as Chairman of the Planning Commission for 2013.

Mr. Koopman called for nominations for Vice Chair of the Planning Commission for 2013. Mr. Dickson moved, Mr. Bush seconded and it was unanimously carried to elect Karen Friedman as Vice Chair of the Planning Commission for 2013.

Mr. Koopman called for nominations for Secretary of the Planning Commission for 2013. Mr. Dickson moved, Ms. Friedman seconded and it was unanimously carried to elect John Pazdera as Secretary of the Planning Commission for 2013.

The meeting was turned over to Mr. Bush.

## APPROVAL OF MINUTES

Mr. Pazdera moved and Mr. Dickson seconded to approve the Minutes of November 26, 2012 as corrected. Motion carried with Ms. Friedman abstained.

## #610 – 100 OVINGTON ROAD (BULLARD) PRELIMINARY/FINAL MINOR SUBDIVISION PLAN DISCUSSION

Mr. Edward Murphy, attorney, was present with Mr. Eric Clase, engineer. Mr. Murphy stated this is a Minor Subdivision Plan that was submitted to the Township in late May of 2012. He stated since then there have been two separate revisions to the Plan based on review comments that had been received. He stated most recently the second revised set of Plans was the subject of review comments from the EAC, the Township engineer, and the Township sewer consultant.

Mr. Murphy noted the December 13, 2012 review letter from the EAC. He stated the EAC indicated that so long as the 150' buffer setback from the center point of the Canal was observed, they had no other comments. Mr. Murphy stated the Plan does respect this 150' buffer, and is shown on the Plan.

Mr. Murphy noted the letter from the Director of Public Works confirming that there is adequate sewer capacity to service the new single-family lot proposed. He also noted the 12/21/12 review letter from Tri-State engineers, the Township's sewer consultant, confirming that since their previous issues have been resolved and provided that the issues of the Township engineer are addressed, they have no further questions. He stated there are some comments in the body of the Tri-State letter, and they will comply with those.

The 12/17/12 letter from the Township engineer was noted. Mr. Murphy stated Page 1 summarizes the nature of the Application. He stated the Bullards own a two and three quarter acre lot with frontage on Ovington Road, and they are proposing to cut the property in two. Lot #1 on the proposed Subdivision Plan is where Mr. and Mrs. Bullard currently live, and that lot when subdivided will result in a 1.3 acre lot. The proposed lot that would be available for the construction of a new single-family home is on proposed Lot #2 and would be of similar size to Lot #1.

Mr. Murphy stated access to both the existing Bullard home and the new home would be by virtue of Ovington Road. He stated one of the review comments required preparation of a Shared Use Common Driveway Easement since both lots would share a single point of access. Mr. Murphy stated he did prepare a draft of the Easement and provided it to the Township engineer a few months ago; however, he has heard nothing further about it.

Mr. Murphy stated page 2 of the review letter identified a number of technical Waivers that are requested. He stated with respect to the Zoning Ordinance section of the review letter, they have no issues; and they will comply. He stated they will also comply with the comments under Subdivision and Land Development on page 3. Mr. Murphy stated they recognize that they do have to obtain Act 537 Planning Module Approval for the project, and they have received confirmation of sewer capacity in that regard. He stated earlier in the process, they also received an adequacy letter from the Bucks County Conservation District.

Mr. Murphy stated he did not receive anything recently from the Bucks County Planning Commission, and Ms. Frick stated a letter was received from them early on, and Mr. Murphy stated that letter was dated 6/29/12. Mr. Koopman stated their comments have been resolved.

Mr. Bush asked if the Township had a comment regarding the shared easement; and Mr. Eisold stated while he does not recall receiving this, it should be fine; but they will need to look at the metes and bounds to make sure they match the Plan.

Mr. Dickson stated in 2006 there was an Application that was denied by the Zoning Hearing Board, and he asked if there was a resolution to that matter. Mr. Murphy stated this predated his involvement with the project. He stated this Application is not seeking any relief from the Zoning Hearing Board. Mr. Koopman stated he feels there was some excess fill put on the property over and above what had been allowed; and as a result of the Zoning Hearing Board's Denial, that excess fill was removed from the site. Mr. Dickson stated there was indication that the neighbors did not want it removed. Mr. Koopman stated since the Zoning Hearing Board Denied the Variance request, the excess fill was to be removed.

Ms. Friedman asked if the fill will be stable enough to have the foundation of the house in place. Mr. Murphy stated the house will not be built in the area where the fill was. Ms. Friedman asked if there will be a basement, but Mr. Clase stated they do not know this yet since they do not yet have an architect on board.

Ms. Friedman stated she felt the Ordinance required a 50' rear yard, and they are showing only 45'. Ms. Saylor stated Lot #1 is an existing non-conformity. Ms. Friedman stated she felt there was a comment indicating that the Ordinance requires a 50' rear yard; however, Ms. Saylor stated a 45' rear yard is required. Mr. Koopman stated there were some discrepancies noted on the Plan, and Mr. Murphy had indicated that they will comply with these Zoning comments.

Ms. Friedman stated the Planning Commission has never liked the idea of having shared driveways. Mr. Murphy noted on the Plan the extent of the shared portion of the driveway which is 45' in depth off of Ovington Road. He stated the driveway then goes left and right to the two properties. He stated the shared portion is 30' wide.

Mr. Murphy stated Item #11 on page 3 of the Township engineer's review letter makes reference to the Easement Agreement, and he will share this with Mr. Koopman as well.

Mr. Koopman stated he assumes that the shared driveway does include a Waiver to some extent since the driveway is supposed to be 5' from the property line, and this Waiver has been noted on Page 2 under the Waiver requests. Mr. Murphy added that this is a dead-end street.

Ms. Friedman stated she recalls reading something about having impervious surface over easements. Mr. Eisold stated since a lot of this is existing, a Waiver has been requested as noted in the list of Waivers being requested. He stated this is an existing condition on Lot #1. Mr. Clase stated the existing sanitary sewer line runs down the middle of Ovington Road and the driveways come off the end of Ovington so some of the proposed driveway will be over the existing sanitary sewer line, but it quickly goes outside the easement.

Mr. Dickson asked if there were any comments from Captain Roche, and Ms. Frick stated he did not comment on the Plan.

Ms. Julie Goldman, 110 Vernon Lane stated she is the property to the right. She stated she moved into the property in October, 2010; and they were attracted to it because it was in an established neighborhood. She stated when they found out about this proposed construction for a single-family home next door, they discovered that the property had a ravine or borrow pit that was filled in 2006. She stated she reviewed the Zoning Board transcript regarding the fill of the ravine and discovered that approximately 11,000 cubic yards of fill was brought in; and when it became clear to the Zoning Board that the intention to fill the ravine was not limited to safety, the Township engineer spoke about his concerns regarding the fill and possible building envelope. She stated his concern was that it was not compacted properly; and without correct compaction, it would be difficult to build a suitable home without the potential for settlement. Ms. Goldman asked if the Applicant has demonstrated proof of soil type and testing to establish that the fill is capable of supporting where the structure is going to be located. She stated according to the Testimony in the Zoning Board transcript, the intent of filling in the ravine was for safety and not for development. She stated her concern is that the proposed work will create hazardous conditions specifically due to earth movements and run-off surface waters. Ms. Goldman stated she does not believe that it was the intent of the Township to enable a buildable lot.

Ms. Goldman stated the Applicant is currently requesting several Waivers specifically with regard to testing (Waiver #1 and Waiver #7) and considering the drainage and erosion problems coming from the storm drain pipe at the end of Ovington and discharging onto the proposed Lot #2, there is a need for testing. She stated this is a manmade lot and not a naturally-existing lot; and they should be required to test the soils on the site and demonstrate compliance that the fill is appropriate, that it will minimize run off, and will adequately support a structure considering the sources of the fill were questionable.

Ms. Goldman stated after reviewing the Applicant's Erosion and Sediment Control Plan, she does not believe that just seeding and mulching will reduce run off and erosion; and she hopes that the Township will require a better solution that includes a buffer strip with shrubs and ground plantings.

Ms. Goldman stated she is also concerned about the heavy machinery that will be necessary to have on the site during construction and any earth movement that will cause tremors that may adversely effect the foundation and structure of her home which was built in 1958 into the hill. Ms. Goldman stated she did not think that there would be any further construction done in the neighborhood, and she asked who will be accountable for any residual adverse effects from this construction.

Ms. Goldman stated based on the Plans, the building is precariously close to the area of the fill which is of questionable stability. She requested that the Township impose a set limit of how close the structure will be to the filled ravine. Ms. Goldman stated she feels there will also be a need to plant additional trees to offset the earth movement and for the stability of the land for storm protection. She stated during Hurricane Sandy approximately five trees fell on Tudor, and they feel the existing trees hold up the hill. She stated the hill protects them from erosion.

Ms. Goldman stated she is also concerned about any stormwater drainage pipes that will be installed and connect to the Canal. She asked the type of piping and machinery that this will entail and the impact on wildlife, the Canal, and the existing infrastructure. Ms. Goldman stated she would like assurance that the construction debris will not pollute the Canal and efforts will be made to minimize the disturbance.

Ms. Goldman stated the Subdivision should not be approved until all regulations and testing are complied with. She stated while she understands that Waivers have a place in the regulatory scheme, if there is an instance where a Waiver should not be considered and where the regulations for testing should be stringently adhered to, this is it. She stated this has direct impact on one of the State's most valuable natural resources – the Delaware Canal. She stated because of where the development is proposed, it is of utmost importance that the appropriate testing is completed to insure preservation and safety of the Canal.

Mr. Don Lex, 106 Vernon Lane, stated he lives behind this “landfill Subdivision.” Mr. Lex stated this whole area was filled in 30’ to 40’. He stated there was overfill done, but this was not the main reason the Committee turned down the Variance five years ago; and he stated it was turned down because steep slopes were violated. He stated all they did was move around a little bit of the dirt, and they did not really take out much. Mr. Lex stated when the dirt was coming in, he and the previous owner at 105 Ovington followed one of the empty trucks; and when the truck driver pulled into a gas station, he talked to the driver who had come from the Richboro area, and he was going to be filling up and dumping for two more days. Mr. Lex stated the driver indicated there were already eight places they were getting dirt from; however, when he spoke to Mr. Majewski, the Township engineer at the time about this, Mr. Majewski indicated that they were only told that there were two places that the fill was coming from. Mr. Lex stated he would like to know what is in the ground.

Ms. Debbie Sutherland, 105 Ovington Road, stated she moved here because she felt it was a neighborhood with complete development. She stated the proposed construction will be a gross disruption to the neighborhood and quality of life. She stated she has small children who play outside, and she has safety concerns about the construction personnel and construction traffic that this project will bring. She stated she is also concerned about the storm drainage, sewers, soil testing, ravine filling, and compaction. She reviewed a number of Waivers she would like the Planning Commission to reject. She stated she is most concerned about the Wavier request regarding the space between the dwelling and the street as all of the other homes in the area meet this requirement. Ms. Sutherland stated that water drainage is a major issue in this area particularly at the end of the street. She stated she is at the end of the street and has been dealing with water run off since she purchased her home, and she would like a guarantee that the change to drainage will not adversely impact her property directly or indirectly; and that if drainage issues do occur, the Township should guarantee that they will be financially responsible. Ms. Sutherland asked if a Stormwater Management Plan has been evaluated by the Township. She reviewed additional Waivers that she feels should be rejected. She stated she does not feel a building lot should be able to be created by simply requesting multiple Waivers. Ms. Sutherland stated she wants a guarantee that if anything should happen due to the acceptance of Waivers, that the Township will be held financially responsible.

Mr. Eric Goldman, 110 Vernon Lane, stated his property adjoins the lot in question. He stated the lot runs along the Delaware Canal. He stated the primary reason he bought the home was the beauty and serenity that the Canal and accompanying woods offered. He stated when they purchased the home two years ago, they were told how the adjacent lot was filled and the objections of the neighbors. He stated they reviewed the Minutes of the Zoning Hearing Board of 2006, and he provided copies of the Minutes related to this issue to the Planning Commission this evening. Mr. Goldman stated the Township allowed 15% of slope to be filled in, and according to the Minutes 26% of the slope was filled in which was thousands of extra cubic feet. He stated he is wondering if this

violation had not happened would this very steep lot be suitable for building. He stated the Zoning Hearing Board was told that the primary purpose of the fill was for safety, but now they want to build on top of it. He stated Mr. Lex advised that one of the truck drivers indicated that this fill was coming from locations that the Township did not know about. Mr. Goldman stated he is concerned about both the stability and the health and safety of the fill when it will be dug up and dug into again. He stated his home is next to this property, and their home is dug into the hill; and because they do not know where the fill came from, they are asking that testing be done for stability, drainage, and safety.

Mr. Goldman asked to read from a letter submitted by Brad Hubbell, 108 Tudor Lane, who was unable to attend this evening as they just received notice of the meeting on Thursday and he and his wife were away. Mr. Goldman stated the letter indicates that they have considerable concerns regarding the project the Bullards are proposing. Mr. Hubbell stated that for three years after they filled in the borrow pit in 2006, the Canal downstream of the site did not completely freeze over while the water upstream of the site has iced over entirely during cold spells; and this indicates that the run off from the site impacted the Canal itself. They are requesting that the Township issue a Continuance of the request until the Delaware Canal Commission can determine any environmental impact the overfill caused and what impact the proposed project might have. He stated the Canal is a fragile area particularly at the wide waters area where the Bullards reside. Mr. Hubbell stated he feels that the Bullards have been deceitful and not forthcoming in their full intent by requesting a Variance to the property, and he would request a Continuance of their request until it can be established what their long-range intent is and how it will impact the neighbors, the community, and the Delaware Canal. Mr. Hubbell stated much of the community first learned of this meeting on Thursday leaving little time to educate themselves about the proposal or investigate any future impacts to the area including the Canal. He stated given the fragile nature of the area, they feel that more time needs to be allotted for the community to investigate and become better informed before something detrimental occurs. He asked that they not rush forward into this decision and give all sides the time necessary to plan and prepare for the changes so that they cause no further harm to the community and the Canal.

Ms. Goldman provided additional written information to the Planning Commission this evening.

Ms. Sutherland stated because of the limited notice time there were a number of people who were unable to attend this evening's meeting, but they did sign a letter; and the letter was provided to the Planning Commission this evening.

Mr. Bush asked Mr. Eisold if he has looked at the stability of the soil where it was filled in; and Mr. Eisold stated they were not the Township engineers at the time when this was done, but they did research this and he had one of his environmental engineers look at it.

Mr. Eisold stated in order to be safe what they did was make sure that the fill did not encroach into the area; and if you look there today, the inlets that are in the street have a pipe that goes right to the excavated area. He stated they were concerned about that and they asked the Applicant's engineer to re-design that pipe to go directly between the properties as opposed to toward the fill area since they felt it was more of a risk to leave it where it was. He stated they recommended this in order to stay away from that area as much as possible.

Mr. Bush asked Mr. Eisold if his office did an examination as to whether or not the Zoning Hearing Board's Decision from 2006 was complied with; and Mr. Eisold stated he did not have a copy of that, and this matter was addressed by the previous engineer. He stated he understands that it was overfilled at one point, and the requirement was for it to be cut back.

Ms. Friedman stated there are also steep slope issues. Mr. Eisold stated where the fill is the steep slopes were much more severe, so filling it in reduced a lot of those slopes; but since they overfilled it, they had to take some of the material and spread it around as he understands the situation. Ms. Friedman asked if there is any confirmation or letter that explains that this was actually properly addressed by the owners, and Ms. Frick stated the Township engineer at the time signed off on it. Ms. Friedman asked if there could be an attachment of that to this property, and Ms. Frick stated she would have to research this for the Planning Commission.

Ms. Friedman stated she would also like to know what the fill was actually made of and whether there were any hazardous materials that could possibly be in the fill.

Mr. Koopman stated Ms. Frick could be asked to research the file and see what is in the file regarding these issues or they could ask the former Township engineer about this.

Ms. Frick stated she does know that the prior Township engineer did sign off on the Permit, but she does not know where the fill came from. Mr. Eisold stated typically the Conservation District would approve where it was coming from.

Mr. Clase stated the DEP and the former Township engineer did sign off on this, and they did send the information to Mr. Eisold; but if Mr. Eisold cannot find it, they would be able to send it out again.

Ms. Friedman stated for the record she feels that this would be something that would be important to have in case someone has a question about it in the future.

Mr. Bush stated the Planning Commission will table this matter until they get the documentation showing where the fill came from and that the slopes were corrected in accordance with the Zoning Hearing Board direction from 2006. He stated once they see this, the Planning Commission will be more comfortable and be able to make a more thorough decision.

Mr. Murphy stated the time runs until March 7, and Mr. Koopman stated the Board of Supervisors will need to address this in February. It was agreed to continue this matter to January 28, 2013.

Mr. Murphy stated he will provide the information they previously provided to Mr. Eisold to Ms. Frick and to Mr. Koopman.

Mr. Koopman stated there has been some discussion about whether the Plan complies with Section 200-64 of the Zoning Ordinance. Mr. Murphy asked if this was in any of the review letters, and it was noted it was not. Mr. Koopman stated it is similar to a provision in the Subdivision Ordinance but is worded differently in the Zoning Ordinance, although he has not reviewed it in preparation for tonight's meeting because he did not see it in a review letter. Ms. Frick stated it relates to access to lots. Mr. Eisold agreed to look into this further, as did the Applicant. Ms. Frick expressed concern that this could not be done in two weeks; and Mr. Koopman stated if this item will have to go to the Zoning Hearing Board, it will take much longer.

At this point it was agreed to consider this matter again in two weeks on January 28, 2013.

#### COMPREHENSIVE MASTER PLAN UPDATE DISCUSSION

Ms. Frick stated 2013 is the year for the Master Plan to be updated. She stated she has been in touch with Lynn Bush to try to set something up with her to work with the Township. Ms. Frick stated previously this process has taken a year to a year and a half. She stated they will set up a Committee, and there will be a number of meetings involved many of which are held during the day. She stated normally there are three Planning Commission members on the Committee. Ms. Frick stated Lynn Bush will also work with all of the Department Heads and the other Township Committees to get their input.

Mr. Pazdera stated the last time they also did a public survey.

Ms. Frick stated she does not feel the task this time will be as monumental as the last time which was a major re-write.

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Ms. Frick stated Lynn Bush will come in to meet with the Planning Commission before she makes a proposal to the Board of Supervisors.

There being no further business, Ms. Friedman moved, Mr. Pazdera seconded and it was unanimously carried to adjourn the meeting at 8:35 p.m.

Respectfully Submitted,

John Pazdera, Secretary