

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – FEBRUARY 11, 2013

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on February 11, 2013. Chairman Bush 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  
   Maryellen Saylor, Township Engineer  
   Kristin Tyler, Supervisor Liaison

Absent:                            Mark Fried, Planning Commission Member

**#610 – 110 OVINGTON ROAD (BULLARD) DISCUSSION AND APPROVAL OF PRELIMINARY/FINAL MINOR SUBDIVISION PLAN**

Mr. Edward Murphy, attorney, and Mr. Eric Clase, engineer, were present. Mr. Murphy stated the Planning Commission last considered this Application one month ago; and at the conclusion of the discussion, a new issue that had not been raised before was brought up about whether or not the Plan complied with a Section of the Zoning Ordinance related to the location of the driveway. Mr. Murphy stated it was determined by the staff that there was an issue with the Plan; and it was recommended that they either comply with the Section noted or seek relief from the Zoning Hearing Board. Mr. Murphy stated they elected to revise the Plan to comply with the Section of the Zoning Ordinance that the staff had issue with, and they have since received a new letter from the Township engineer confirming that the revised driveway arrangement shown on the current Plan now does comply with the Zoning Ordinance. Mr. Murphy stated the submission of the Revised Plan triggered a new letter from the Bucks County Conservation District dated 2/5/12, and they will comply with those issues noted.

Mr. Murphy stated the Boucher & James letter dated 2/5/13 highlights the Waivers that were previously reviewed with the Planning Commission. He stated following the last meeting he also circulated a Unilateral Declaration for the shared driveway, but this is now moot given the change to the Plan which eliminated the shared driveway.

Mr. Bush stated in addition to the issue of the shared driveway, there were also questions about the material in the fill and the slopes of the fill. Mr. Murphy stated subsequent to the last meeting, he received from Ms. Frick a copy of the prior Township engineer's review and confirmation that those issues had been satisfactorily completed.

Ms. Friedman noted the driveway over the sanitary sewer easement, and she stated she would like this noted on the Plan so that anyone who would purchase the property in the future would know this. Ms. Frick stated there will be a Note on the Plan that if there is a need to get to that easement, it will be the responsibility of the homeowner. Ms. Friedman stated she would like this to be very obvious. Mr. Murphy stated Note #20 on the Plan shows this.

Mr. Bush asked how many years ago was the fill put in, and Mr. Clase stated it was eight years ago. Mr. Bush stated he assumes that any settling would have already happened, and Mr. Clase agreed. Mr. Murphy added they are not building on the fill.

Ms. Saylor stated Waiver #3 of the Waiver request relates to the shared driveway, and this is no longer necessary. Mr. Clase agreed to make this change.

Ms. Julie Goldman, 110 Vernon Lane, stated she would like to reiterate that the Subdivision should not be approved unless all regulations and testing are complied with. She stated she does not feel compliance with the Code causes them any undue hardship, and any hardship claims were self created. She stated if there is an alternative standard that has been demonstrated to provide equal or better test results, she would like to know what it is. She stated she feels that any Waiver requests should be denied.

Mr. Bush asked what she is referring to with regard to testing that was not done, and Ms. Goldman noted Waiver request #1 under Stormwater Management, and Waiver request #5 under the Subdivision and Land Development Ordinance. Ms. Saylor stated the Applicant actually falls under the exemption criteria for the Stormwater Management Ordinance because of the square footage; and they could opt to go under the small project guidelines. Mr. Koopman stated if they have an exemption, they would not need a Waiver. Ms. Saylor stated she feels they may also be exempt from the Subdivision and Land Development Ordinance requirements in this regard. Mr. Koopman stated because there seems to be some confusion, this is probably why the Applicant requested Waivers for clarification purposes. Mr. Koopman was provided copies of the Ordinance to briefly review. He read SALDO Section 178-93.B.(3) and he stated it seems this Section would be controlled by the exemption provision, and they would not need a Waiver from this

Section. He also stated he feels that under the Stormwater Management Ordinance, this Development is exempt from the requirement under Section 173-6 so that no Waiver would be required for that either. Mr. Koopman re-read Section 178-93.B.(3) which he stated does not appear to require infiltration testing but requires that there not be any flooding or adverse effect upon surrounding properties, and there has not been an indication in the engineer's report that this situation will occur. Ms. Saylor stated she felt there was another Section in the SALDO that was updated through January, 2005 that referred to infiltration testing. Ms. Saylor stated she still feels that this Applicant would be exempt. Mr. Koopman stated the Section that has been cited in the engineer's report is 178-93.B.(3). Mr. Clase stated they requested the Waiver just in case it was determined to be required. Mr. Koopman read from another Section of the Ordinance which had been amended which appears to have a requirement that there be testing. Mr. Koopman stated without doing a significant amount of research he is not sure whether the Stormwater Management Ordinance supersedes the SALDO or not. He stated the Stormwater Management Ordinance is usually the Ordinance that guides them in connection with stormwater management procedures. Mr. Koopman stated the Amendment he was reading (178-93 B) was amended and inserted in 1999 and Ordinance 321 was adopted on 12/20/06. He stated the date the Stormwater Management Ordinance was updated was in 2001. Mr. Koopman stated he has not done research to determine if there is a provision in the Stormwater Management Ordinance that it is the controlling Ordinance to the extent that there are any other Ordinances or inconsistencies. Mr. Koopman stated what they have is just an excerpt. He stated in order to be on the safe side, the Planning Commission could recommend a Waiver or they could recommend that the infiltration testing be done. He stated he feels that the Stormwater Management Ordinance does indicate that there is an exemption from that requirement for a Residential Subdivision with a minimal amount of area being disturbed, and Ms. Saylor agreed. Mr. Koopman stated they could take a recess while he researched this further; however, Mr. Bush stated he feels the Planning Commission is prepared to move on. Mr. Clase noted what they used was the latest Ordinance that is available on-line. Mr. Koopman stated unless the Planning Commission has an issue with not doing the testing, he would suggest that they recommend the Waiver to be on the safe side.

Ms. Friedman moved, Mr. Dickson seconded and it was unanimously carried to recommend to the Board of Supervisors Approval of the Preliminary/Final Minor Subdivision Plan last revised 1/29/13 subject to the following:

- 1) Compliance with Bucks County Planning Commission letter dated 6/20/12
- 2) Compliance with Boucher & James letter dated 2/5/13

- 3) Compliance with Tri-State Engineer Engineers letter dated 12/21/12
- 4) Compliance with the Remington & Vernick letter dated 5/16/11
- 5) Compliance with Gilmore letter dated 1/29/13
- 6) Compliance with Bucks County Conservation District letter dated 2/5/13
- 7) The Planning Commission is in support of the Waivers requested
- 8) Remove Note #3 on the Plan and Note #3 on the Waiver request list regarding the shared driveway as there is no longer a shared driveway

#### PRESENTATION OF PROPOSED PERVIOUS PAVEMENT ORDINANCE

Mr. Jim Bray and Mr. Alan Dresser from the Environmental Advisory Council were present. Mr. Bray stated some years ago a Township resident advised him that he had installed pervious paving because he felt it was the environmentally-correct thing to do, yet he received no credit for it and had to go to the Zoning Hearing Board for a Variance. Mr. Bray stated this started a discussion with Mr. Majewski, the Township engineer at the time, about coming up with a change to the Ordinance that would give credit for the use of pervious paving. Mr. Bray stated Mr. Dresser agreed to work on a draft to the Ordinance that would give homeowners credit for the use of pervious paving. Mr. Bray stated this draft Ordinance has been reviewed by the Township engineer who made several comments and suggestions which have been incorporated into the draft that is before the Planning Commission this evening. Mr. Bray stated the EAC has had a good relationship with the Planning Commission over the years and has created several Ordinances over the last few years which included invaluable input from the Planning Commission which is why they are present this evening even though it is not required.

Mr. Dresser reviewed the supporting documents which had been provided to the Planning Commission. He also reviewed different types of pervious paving and discussed the need for a stone base to make the system work. He discussed where pervious paving could be used adding it should not be used where heavy trucks or busses would be traveling. Ms. Frick asked if it could be put in an area where a resident may be storing a boat or RV, and it was felt it should not be used for such an area. Ms. Friedman asked if a resident used this for their driveway could they have a mulch delivery, and Mr. Dresser stated he did not feel this limited use would present a problem.

Ms. Frick asked how subsequent purchasers of the home would be made aware that the property had this type of surface.

Ms. Friedman stated she is concerned that residents would not pay attention to the details and could install this in places where they then have problems with heavy equipment being on the surface. Ms. Frick stated there could be problems if people use this on their driveway and then have work done at their home such as installation of a pool or a kitchen renovation which would require heavy vehicles being on the driveway.

Mr. Dickson also stated a homeowner could have a contract for snow plowing on their property which could damage the surface because they have not raised the blade as required. Mr. Dresser stated one of the provisions of the Ordinance is that the contractor installing the pervious paving would be required to provide maintenance instructions and maintenance schedules to the property owner and they could elaborate on this section as it relates to vehicles. Mr. Koopman stated there is also an inspection requirement, and Ms. Frick stated this would be the responsibility of the Township engineer.

Mr. Koopman stated they should also consider if they would also require re-inspection to make sure it is being maintained. Ms. Friedman asked if there are any informational pamphlets already made about the required maintenance that the Township could hand out.

Ms. Frick asked what would determine whether a 1' of stone versus 3' of stone would be required since this is a big difference. Mr. Dresser stated one determination would be the infiltration rate of the soil underneath. Ms. Frick stated she assumes they would then have to do testing, and Mr. Dresser agreed. Mr. Dresser stated there may also be times when you want to slope your impervious paving so the run off from that would go onto the pervious paving; and if the pervious paving is designed correctly to handle the additional run off, it would be a double benefit.

Ms. Frick asked what would be done if the property were sold, and she asked if information about this would be required to be on a Deed. Ms. Tyler stated she feels it would be comparable to a C/O; however, Ms. Frick stated the Township would not know that the property is being sold since a C/O is only required for a new home. Mr. Koopman stated they could require a Restrictive Covenant to be Recorded including the fact that there is pervious paving on the property, that it is regulated by the Township Ordinance, and that there are maintenance requirements for the pervious paving. Mr. Koopman stated while it could be done by Ordinance, those purchasing a home do not usually review all the Township Ordinances. He stated this is why he feels there would have to be some kind of restriction or Covenant that the property would be subject to as the Township Ordinance will require maintenance of the pervious paving. He stated this could be cumbersome as the Township does not normally get involved with these types of restrictions; but this could be required as a Condition for the issuance of a Permit.

Mr. Bush stated it appears that there would be the need for an annual registration that they have complied with the maintenance required.

Ms. Tyler asked if a similar Ordinance has been in effect in any other community, and Mr. Dresser stated he has only found them in California and Florida. Mr. Bush asked what they did to make sure that the surface was properly maintained going forward; however, Mr. Dresser stated he did not see anything on this in those Ordinances. Mr. Bray stated there have been cases where the Zoning Hearing Board has granted Variances if people installed certain mitigation, and they were then able to go over the impervious surface percentage permitted; and he does not feel that the Township is going out all the time to check on this. Ms. Frick stated with new development, they do check on-site infiltration; and it is required to be inspected prior to the C/O. Mr. Bray stated he is discussing what is done on an on-going basis. Ms. Frick stated when it is part of a Subdivision, there are regulations and they do get annual inspections and this is shown on the Plans; however, this would be more difficult for individual residences.

Ms. Tyler stated she is concerned about enforcement. She stated if a pervious surface is not maintained, it would no longer be porous and they would then be over the permitted impervious limit. She asked what would be the Township's remedy. Mr. Dresser stated inspection would be required for anything over 1,000 square feet. Ms. Tyler stated the Township would then have to devote resources to having these inspected. Ms. Friedman stated a driveway would not necessarily be less than 1,000 square feet. She also stated she feels they need to assume that private property owners will not maintain this properly and it will stop functioning taking them over their impervious surface limit. Ms. Frick stated she is also concerned that a property owner may decide they do not like it and replace it with impervious materials.

Mr. Dresser stated he feels they should consider the benefits of this before they make all these negative comments. The Planning Commission and staff indicated they felt this was a good idea, but they had concerns.

Ms. Tyler asked what the Township could do if the homeowner was not maintaining it, and Mr. Dresser stated the projects over 1,000 square feet would be required to have a maintenance plan and be inspected by the Township. Mr. Koopman stated if the residents do not maintain it, the Township would have to cite them and possibly fine them. Mr. Dresser stated if they do not maintain it, it becomes impervious surface, and Ms. Tyler stated they would then be well over the permitted impervious surface limit.

Ms. Frick stated she is concerned that they are only inspecting projects involving 1,000 square feet or more. Mr. Bray stated if the group feels they should inspect everything to make sure it is being maintained, they should require inspection even if it is less than 1,000 square feet. Mr. Bray agreed that if they are not complying, they would have to be cited. Ms. Friedman stated she feels there are benefits to having residents do this, but enforcement will be costly.

Ms. Tyler asked how they came up with the 50% set-off ratio; and Mr. Dresser stated there are a number of ratios out there, and he felt that this was a good middle ground. He stated he wanted to provide an incentive.

There was discussion about the use of pervious paving at Makefield School which is working well, and Mr. Dickson asked about the maintenance schedule they agreed to. Mr. Koopman stated a school and other institutional facilities would have facilities managers, etc. and if it is on a schedule, they would do it; however, it would be different for an individual homeowner.

Ms. Frick stated she feels they need to make sure that the property owners continue to maintain it as pervious. She stated she feels the homeowner who puts it in will probably maintain it, but she is concerned with a re-sale. Ms. Tyler stated she feels if they are going to permit this, the homeowner should be required to have an Amended Deed and reference compliance with the Township Ordinance. Mr. Bush stated he feels the majority of people will not do this if they are required to file an Amended Deed which can be costly. Mr. Bray stated he feels going to the Zoning Hearing Board and paying \$500 is more of a deterrent. Mr. Bush stated filing an Amended Deed will cost more than \$500.

Ms. Tyler stated she would like to know how this has been implemented and enforced in California and Florida.

Ms. Tyler noted the Section regarding total impervious/pervious surface which indicates it should not exceed a factor of 1.33, and she asked for a further explanation on this. Mr. Bray stated they wanted to give the homeowners credit, but they did not want to have a sea of blacktop, so they have provided a cap of 33%.

Ms. Frick asked if there are people who perform the pervious paving maintenance and have the equipment needed who the homeowners could hire to do the maintenance. Mr. Bray stated Upper Makefield Township has pervious paving and they vacuum it once a year, and they do rent the equipment out. Ms. Tyler stated Public Works could purchase the equipment and perform the mandatory maintenance every two years.

Ms. Frick noted again the previous discussion about needing to know your soil type, and she stated homeowners would not necessarily know what their soil type was. Mr. Dresser stated there are soil maps.

Mr. Dresser stated there are benefits environmentally for using pervious paving. He also stated you do not need as much in the way of stormwater management systems if you use pervious paving because you do not have as much run off. He stated they could also have adjacent impervious areas flow into the pervious area. He stated it also improves water quality of water in parking lots. He stated it would also preserve land as you would not need detention basins. He stated it would also help protect trees. He stated snow also melts faster where they have the stone bed.

Ms. Frick asked how delivery trucks would be regulated for deliveries at shopping centers that use this pervious paving; and Mr. Dresser stated this would be up to the owners, and he would assume that deliveries would occur in the back, and they would need to have impervious paving at those locations. He stated you could have pervious in the front and impervious paving in the back where deliveries would take place; however, it was noted that some delivery trucks do deliver at the front. Ms. Saylor stated at some locations they have used pervious for the outer rim of the parking spaces, but the drive aisles would be standard impervious surface.

Mr. Dresser discussed the different types of pervious pavement including pervious concrete. He stated pervious pavement also lasts a little longer because it is not subject to the frost/thaw action. Mr. Dresser stated with regard to winter maintenance, while you can use salt, you cannot use sand or cinders. He stated you also need to have the area around the pervious paving well maintained so that dirt does not wash into the area where the pervious paving is and clog it up.

Mr. Dresser reviewed some of the Conditions of the proposed Ordinance including the 50% credit so that if you pave one acre, it would only count as one half acre. Mr. Bray stated there are also the restrictions on the total amount that can be used on a specific property because visual aesthetics are also very important as well. Mr. Dresser stated if a property were limited to 18% impervious surface, you could go up to 24% with pervious.

Ms. Frick noted that those who are permitted to have 18% were really only permitted to have 15% but back in 1986, they re-did the Impervious Surface Ordinance; and the Township engineers went back and looked at all the developments and determined that 18% would be the maximum that could be handled by the stormwater management systems. She stated she is concerned about going higher which she feels could cause problems if the surface does not work or is not maintained. Mr. Koopman stated they also need a system to put subsequent owners on notice and have an enforcement provision.

Mr. Dresser stated if it is a patio it only has to be swept, and it is not a big effort. Ms. Tyler stated she see a patio as the most appealing use as well as anything around a pool. She stated she is concerned about using this pervious paving for the driveway. Ms. Tyler asked if there is a compaction issue, and Mr. Dresser stated there is; however, Mr. Bray stated the materials are very durable.

Ms. Tyler asked about the cost, and Mr. Dresser stated for a homeowner it would probably cost a little more for pervious paving.

Ms. Frick asked about the possibility of starting out by allowing this for new developments only as opposed to existing properties. Ms. Friedman stated she feels some of the existing homes would have the worst stormwater management practices on them, and this would provide more significant improvements than the newer developments which have to adhere to the Stormwater Management Ordinances.

There was discussion on the number of impervious surface Variance requests heard by the Zoning Hearing Board; and though an exact number was not known, it was estimated to be between five to ten at most per year. Ms. Friedman stated she feels as Township properties age, there will be more updates made to the properties.

Ms. Tyler stated rather than make a change to the impervious surface permitted, possibly they could consider a tax credit for using these materials as an incentive provided it is maintained. She stated in this way, they would not have a big problem if there was a lack of maintenance and an excessive impervious surface number. Ms. Friedman stated she would be in favor of this since she is concerned about the increase of visual impervious surface if they permit them to go to a higher percentage. Mr. Dresser stated this is why they placed a limit adding that although pervious surface looks the same as impervious surface, it does not act the same. Ms. Friedman stated she would prefer what Ms. Tyler is considering as they would not have more surface covered, and they would gain much more in stormwater management by not increasing the allowance for any surface yet it would be pervious. Mr. Dresser stated he feels that decreasing tax revenue will be a “hard sell.”

Mr. Bray stated he does not feel that anyone has questioned the environmental benefit, but they need to do more research on where this has been enforced, how it is being maintained, etc. He stated they will also consider an incentive-type system. Mr. Bray agreed that visual aesthetics are very important which is why they had considered a limit. There was discussion about possibly getting a tax credit from the State.

Mr. Bush asked why people would need a tax incentive if they were able to get a higher percentage of coverage; and Ms. Tyler stated her proposal would not give a higher percentage, and they would get a tax credit instead. She stated her proposal would avoid the potential negative consequence of non-maintained surfaces.

Ms. Frick stated she also feels there could be a distinction between Commercial and Residential. Mr. Bray stated he does not feel Government needs to be over-reaching and get involved in every single little project; but he feels meaningful projects should get Permits. Ms. Frick stated they require Permits now for small projects such as patios, walkways, etc.

Mr. Dresser stated the way he has drafted the Ordinance, the Township would come out and inspect every two years. Ms. Friedman stated they would need to know how long it could take for it to become non pervious.

Ms. Tyler asked how much it would cost to maintain a 1,000 square foot pervious surface, and asked what would be entailed. Mr. Dresser stated he would just sweep it. Ms. Saylor stated you do need to vacuum it to get out the fines and dust. She stated she is not sure how easily a resident could rent the equipment needed for a small residential project. She stated she is familiar with large-scale, industrial equipment; and Ms. Frick stated she does not feel a resident would want to rent the large-scale industrial equipment for their purposes.

Mr. Bob Dwyer stated he has done some development in Florida, and there is a tax credit given for reducing impervious surface and a tax increase for increasing impervious surface. He agreed to provide some information to the Township on this.

Mr. Pazdera stated the draft Ordinance indicates that the surface needs to be installed by a contractor qualified in the particular proposed system, and he feels this section needs to be tighter. Ms. Frick stated she feels this is important because if it is not constructed properly, it will not work.

#### COMPREHENSIVE MASTER PLAN UPDATE

Ms. Frick stated Ms. Bush will be present at the next meeting of the Planning Commission to be held on Monday, February 25. She stated Ms. Bush's proposal has already been sent to the Planning Commission. Ms. Frick stated she does not feel it will be as big a project as was the last update.

There being no further business, Mr. Dickson moved, Mr. Pazdera seconded and it was unanimously carried to adjourn the meeting at 9:10 p.m.

Respectfully Submitted,

John Pazdera, Secretary

