

TOWNSHIP OF LOWER MAKEFIELD  
PLANNING COMMISSION  
MINUTES – JUNE 10, 2013

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on June 10, 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  
Mark Fried, Member

Others: Nancy Frick, Director Zoning, Inspection, & Planning  
Robert Habgood, Code Enforcement Officer  
John Koopman, Township Solicitor

Absent: Kristin Tyler, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Pazdera moved and Ms. Friedman seconded to approve the Minutes of April 22, 2013 as written. Motion carried with Mr. Fried abstained.

Mr. Dickson moved and Ms. Friedman seconded to approve the Minutes of May 13, 2013 as written. Motion carried with Mr. Fried abstained.

#574 – CAPSTONE TERRACE FINAL PLAN RECOMMEND EXTENSION

Mr. Bob Dwyer, representing the Applicant was present. He stated they had stopped moving the process forward because they were waiting to secure a tenant for some use at the property, and they would like to extend their time. He stated BPG has a significant staff of brokers they are working with. He stated they have Lower Makefield Corporate Center and Floral Vale and the vacancy rates are extremely high.

Mr. Bush stated he assumes it is the economy. Mr. Dwyer agreed. He stated he has been present during discussions of the Comprehensive Plan reviews as BPG is looking to see if there is anything else they can do at the property. Mr. Dwyer stated he is looking to see if he can provide any input on the Comprehensive Plan to possibly allow for some alternative uses for the O/R because of the abundance of space in the O/R.

Mr. Dwyer stated at some point they will probably come back and finish the Approval process if there is someone interested, but they have not found anything remotely close to a prospect; and what they do have they are trying to push into Floral Vale or the Corporate Center and not build a new building.

Ms. Friedman moved, Mr. Dickson seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Extension for Capstone Terrace to September 30, 2013.

#### DISCUSSION AND RECOMMENDATION REGARDING PERVIOUS PAVEMENT ORDINANCE

Mr. James Bray and Mr. Alan Dresser were present from the Environmental Advisory Council. Mr. Bray stated they feel they have a good product to put in front of the Planning Commission this evening. He stated Mr. Koopman, the Planning Commission, the Township engineer, and the EAC have all looked at it, and Mr. Fedorchak has made some suggestions as well. Mr. Bray stated at the last meeting when this was discussed the Planning Commission expressed some concerns and had some suggestions, and they would like to go over those and feel they have answered them satisfactorily and many of the suggestions made by the Planning Commission have been incorporated into the Ordinance itself.

Mr. Dresser stated concerns were raised at the 2/11/13 Planning Commission meeting. He stated the first issue dealt with was how will the Township ensure that the smaller, residential pervious pavement projects are properly maintained. Mr. Dresser stated what they had proposed in February was that the smaller projects would have no requirements, inspections, or Agreements. He stated at the meeting it was suggested that they put a covenant on the property Deed or amend the property Deed that would have the Maintenance Agreement on it forever. He stated what they have proposed is a middle ground where there will be a Pervious Pavement Maintenance Agreement with the Township which has been included in the information provided as Exhibit 8 since the SALDO currently has seven Exhibits. Mr. Dresser stated included in this is information about proper maintenance, the requirement for semi-annual inspections of the pervious pavement, and that it be cleaned at least once every two years. He stated the proposal is to have the Township come out and inspect the pervious pavement every two years; and they have suggested a \$50 inspection fee, with the amount subject to discussion. Mr. Dresser stated if the property fails that inspection, the property owner will have forty-five days to bring the pervious pavement into compliance; and there will be another \$25 inspection for the Township to verify that they are in compliance.

Mr. Dickson noted Item #2 on Exhibit 8 which states, “At a minimum, the Landowner or Landowner’s designee shall conduct semi-annual inspections evaluating the condition and performance of the pervious pavement.” Mr. Dickson asked who will train them as to what an appropriate inspection is. He also asked how the property owner provides proof to the Township that an inspection was done and what is the criteria. Mr. Dresser stated they can look at it to see if there is grit, dirt, mold or algae which would block it. He stated all you have to do is take a gallon of water and dump it on it, and if it goes through it is working. He stated it is very simple. Mr. Dickson expressed concern that there would not be consistent criteria since one person may feel it is fine, but another may not. Mr. Dresser stated this is why there would be an inspection every two years. Mr. Dresser stated this is for small projects and not big parking lots, and the homeowner will see it every day.

Mr. Fried asked what a homeowner would do when they make their inspection, and Mr. Dresser stated you look at to see if there are leaves or dirt. He stated there is a certain type of vegetation that will try to grow across it, and you need to get rid of that. He stated you clear it so that it is clean. Mr. Bray stated this would be an informal inspection done by the homeowner. He stated if the homeowner is not religious in doing this, when the two year inspection by the Township comes in, the homeowner will probably have to do some work. Mr. Bray stated the homeowner inspection is very simple to do, and all you have to do is take some water and pour it down the pavement; and if it goes through, it is working.

Ms. Friedman asked how they will make the landowner accountable to the Township for that being done, and she asked if they will write the Township a letter or sign something indicating that they have conducted this two times a year. Mr. Bray stated they can do it or not do it as that is up to the homeowner, but they will have the Township inspection every two years. Ms. Friedman asked if a poorly-maintained pervious surface can be restored to a full-functioning system. She asked if it has been poorly maintained, can it be reversed by just vacuuming or sweeping it or will it suffer too much over the two years if someone does not do the semi-annual inspection. Mr. Dresser stated he has never heard of anything that was not able to be cleaned. Mr. Dresser stated they can be designed to infiltrate 100” to 200” an hour so even if they lose 80% capacity, they can still take a lot of water.

Mr. Fried asked how many different manufacturers there are for these surfaces. Mr. Dresser stated there is pervious concrete, pervious asphalt, and pervious pavers. He stated with regard to pervious concrete, different manufacturers make it one of which is in Morrisville. Mr. Fried asked if there is a certification where an independent body would certify that it is pervious. Mr. Dresser stated he feels the manufacturer does have to specify that it is pervious. He stated if the EAC gets before the Board of Supervisors, they will have a representative from the Pennsylvania Aggregate Association with them that evening.

Ms. Friedman asked if they checked with the Township to see if the \$50 inspection fee is a reasonable charge according to how much the Township pays people to do that; and Mr. Bray stated they did not, and this is just a suggestion. He stated under Pennsylvania law inspections are supposed to reflect the cost associated to perform the inspection. He stated he feels the fee should be whatever the Township feels is appropriate.

Ms. Frick stated she feels they should be better able to determine this when they get a better idea as to what exactly they will be doing every two years and they know exactly how much time will need to be allocated to this. Ms. Friedman stated this would apply to the \$25 re-inspection fee as well.

Mr. Pazdera asked what they would do if someone were to seal coat the surface, and Mr. Dresser stated this could not be corrected; and if they were counting it as pervious paving to keep them under the impervious limit, they would be in violation. Mr. Pazdera asked what they do then, and Mr. Dresser stated they would do the same thing that is done for any other Zoning violation. Ms. Frick stated the Zoning violation process is a costly process.

Ms. Frick stated her concern is with subsequent homeowners, and she feels that the initial homeowner who has this done will be excited about it and will follow the proper procedures, but she is concerned about the subsequent owners. She stated if someone is selling their home it is possible they might not be upfront about what is required to maintain these pervious surfaces. Mr. Dresser stated they did address this in their response, and it is noted as Item #2. Ms. Friedman stated with time and education, she does feel people will be aware of these green techniques and hopefully will be more attentive.

Mr. Dickson stated he feels it goes beyond the maintenance of the actual pervious surface; and he noted Item #3 in Exhibit 8 which states, “Vegetated areas adjacent to the pervious pavement shall be well maintained to prevent soil washout onto the pavement.” He stated there could be differences as to what one person feels is “well maintained.” He stated it also indicates, “The discharge of yard debris or grass clippings onto the pervious surface shall be avoided.” He stated this seems to be telling people they cannot have a side-discharge mower, and they must buy a mower that has a bagger. Mr. Koopman stated people may also have a lawn service, and they often blow the clippings on the asphalt.

Mr. Dickson noted Item #4 of Exhibit 8 which states, “Vehicle anti-skid materials such as sand or cinders must not be applied on or adjacent to the pervious pavement.”

Mr. Dickson stated this is of concern because if there is a sidewalk next to the pervious surface and someone slips and falls because they were told they could not use sand or cinders, he questions if the Township would be liable for a slip and fall because the Township told them they could not use anti-skid materials. Mr. Koopman stated the homeowner may not want to take this risk themselves because they have exposure.

Mr. Koopman stated he understands that salt would be okay.

Mr. Fried stated much of the Township is already built out so they may be looking at people who are looking to put on an addition or a patio. He asked if they are also considering that this would be for larger construction projects. Mr. Dresser stated he sees this being done like it was at Makefield School in their parking lot. He stated a new office building coming in could use it as could Churches if they need to expand since it is a lot better than impervious pavement. Mr. Fried stated possibly as a first step they should start with larger properties because there would be more of an impact; and there would also be more of a management/continuous ownership situation like a commercial building, religious organization, school, etc. He stated this would narrow it down to an entity that has some level of professionalism that could maintain it. Ms. Frick stated she would agree with this as there would be someone who would be responsible for it. Mr. Fried stated they could start with this, and then take the next step to residences.

Mr. Bush asked Mr. Bray and Mr. Dresser if they have an idea in communities that have this type of Ordinance, what was the percentage of homeowners who are in an existing home and made use of these types of surfaces so that they could get a larger area of coverage. Mr. Bray stated the Ordinance proposed is very cutting edge, and there are very few of them around. He stated he does feel that it will probably not be used by a lot of property owners. He noted at the last Zoning Hearing Board meeting, three people were applying for an increase to their impervious coverage and possibly they could have used this Ordinance and it would have saved them the money going to the Zoning Hearing Board and they would be doing the right thing for the environment.

Mr. Fried asked how many times they see people come in for allowance to go over the permitted impervious surface, and Ms. Frick stated it would possibly be one to two per month. She stated the older developments were designed to handle 15% impervious surface; and in 1987 the Township engineers went out and checked the stormwater management and determined that they could handle another 3% from every homeowner so they raised a lot of them that had been permitted only 15% to 18%. She stated it is the people who want to go beyond a house, patio, etc. and want to add an addition, in-law structure, or a pool which has 1,200 square feet of patio. She stated while a pool is not considered impervious surface, the surface around it is.

Mr. Fried asked if they are creating more ability to absorb the rainwater than is existing when you use the pervious surfaces. He asked the difference between this material and grass when you consider absorption, and Mr. Dresser stated it is better than grass.

Ms. Frick stated she does not feel that someone would be able to rip up their driveway and put down this type of surface for less than \$500 which is what it would cost to go to the Zoning Hearing Board for a Variance. Mr. Dresser stated this would be an option for them. Ms. Friedman stated if they were to put in a pool and use this type of surface for the patio, they would not have to go to the Zoning Hearing Board to get a higher percentage of impervious surface on their property. Ms. Frick stated you could put in a pervious patio now; and Mr. Bray stated while they could, they do not get credit for it.

Mr. Dresser stated currently pervious counts as impervious surface which is the whole reason they are doing this Ordinance. Ms. Frick stated this would depend on the type of base used. Ms. Frick stated a wood deck would not count as impervious provided there was not concrete or a barrier underneath.

Mr. Dickson noted Item #10 on Exhibit 8 which indicates “The landowner shall have forty-five (45) days to address all failed items as noted on the inspection report. The Township will then perform a re-inspection of the areas that required maintenance or repair.” Mr. Dickson asked how the landowner will know who to go to for maintenance and repair recognizing that they could go back to the people who installed it. He asked if the EAC will provide a list of people that are licensed or able to repair this. Mr. Dickson stated there could also be litigation if a person indicated that they have done the best they could, and the Township has said it still fails. He stated he feels it needs to be addressed more clearly exactly what the process will be legally. Mr. Dresser stated they have at least five documents that explain how to maintain the pervious paving, and they could put them on the Web and make them available. He stated they could also add more documents to this.

Mr. Dickson stated he is concerned that someone could do a “shoddy” job, and he asked what is the process, and how do you define “damage.” Mr. Bray stated he feels the process would be the same for any “shoddy” work done in Lower Makefield. He stated if you put a roof on and the inspectors come out and say it is not correct, it would be the same thing. Ms. Frick stated the difference is that there is a Code Book that tells how certain work needs to be done, so the Township would need some kind of guidance for this. Mr. Koopman stated there would have to be specs somewhere for what qualifies as pervious paving. Mr. Bray stated there are, and they are part of this through the Pennsylvania BMP Manual that is referenced. Mr. Koopman stated an objective standard would be a prerequisite. Mr. Dickson stated this must be detailed so that people know that whoever is doing the work must adhere to these standards. Mr. Fried stated if there are existing standards they need to have these for the Township so that when they inspect they have these guidelines.

Mr. Fried asked Ms. Frick how much it costs now for an inspector to go and inspect a project; and Ms. Frick stated it is covered under the Building Permit fee, and it is an hourly rate. Mr. Koopman stated there will be an Application and if there is going to be pervious paving, it will need to specify that and provide the specs which will be inspected by the Building Inspector. Ms. Frick stated she does not feel the Building Inspector would look at this, and it has not been determined yet who would inspect it. Mr. Fried stated he feels it would be handled just as other projects are handled and so they need to consider what the appropriate Building Permit fee would be for this type of project. Ms. Frick stated they need to understand what the inspection will entail so they can decide on a fee which would include how long it takes to do the inspections and when it will need to be inspected because they will probably need to see it at various levels.

Mr. Fried stated this is what they are going to need to know from the EAC which would be a step-by-step process so that the Township can build the process around it.

Mr. Dresser stated he felt there was an inspection sequence for any construction; and Mr. Fried stated while there is, it is specific to that type of construction, and this is a new type of construction.

Mr. Koopman stated if someone wants to replace their driveway, they would have to get a Permit; and Ms. Frick has indicated that comes to the Road Department so they need to tailor the process so there is some place in the Township where the Permit Application comes in and is reviewed to make sure that it meets the specs for a pervious driveway.

Mr. Fried stated he feels this is more work that the Township is taking on, and they need to consider if this is what they want to see the Township doing. Mr. Bray stated he does not feel they are taking on more work; and if there are twenty a year, he feels that would be a lot. Mr. Fried stated if there is one, it has to be done right all the way through.

Ms. Frick stated in this instance this is going to give the property owners something extra, and she feels this will get more of a reaction. She stated if property owners feel that they can get more impervious, they may decide to do it; and the Township needs to make sure that they are doing it right.

Mr. Bush stated he does not feel they need to “reinvent the wheel.” He stated he feels it is a laudable goal but he is concerned that the homeowners will not do anything until the Township comes out to inspect. He stated they have recommended that the Township will come back after forty-five days, but if nothing is done, it could sit like that forever. He stated he did a short search on the Internet and found that there are quite a few other Municipalities, although they are not in Pennsylvania, that have done this kind of thing. He stated he also found a few sample Ordinances which were put out by industry groups although they may be slanted and not enforceable. He stated he would like to know what has happened in those other communities that have had this. Mr. Bush stated of all the ones he saw on the Internet, they all had a lot more detail than what has been provided in terms of what the Municipality was looking for. He stated they did not have detail about enforcement.

Mr. Bray stated under the LID Ordinance, the Township allows swales and rain gardens, and under the Ordinance they are supposed to be checked and administered by the homeowner, and this would be no different. Mr. Bray stated in this case they added a step more, and he feels this is a better concept than the others because of the inspection requirements. He stated if you have a rain garden or a swale and you received credit for it, basically no one is checking it in the future. He stated in this case, it will be checked in the future; and it will undergo an inspection regimen which they feel is important.

He stated he feels anytime a Variance is requested and some kind of mechanical structure or similar structure has to be built as a remedy, they feel that should be inspected in the future too even though it is not done now. He stated in this case, it will be a requirement to have an inspection. He stated they could tighten up the language a little as far as inspection is concerned. He stated the Township engineer will be looking at this as well.

Ms. Friedman asked if the Township is requiring inspection once every two years and they fail to address the problems, is it legal for the Township to send someone out and do the maintenance required with the costs to be paid by the property owner. Ms. Frick stated the Township does not have this type of equipment and would have to go out and buy the equipment. Mr. Koopman stated there are enforcement provisions, and the property owner could be fined for a violation. He stated it would be the same for this as well; and if you or your successors in Title do not do maintenance, you would be fined. Mr. Koopman stated the Ordinance would need enforcement provisions to be added. Ms. Friedman stated she feels the fine could be at the magnitude so that a person could be hired and the equipment rented to do the maintenance.

Ms. Frick stated they take people to Court all the time and do get the fines, but the violation still exists. She stated if it is not corrected, they have to start the process all over again. Ms. Friedman stated if the Township were to use the money collected as a fine to hire someone to clean it, the problem would be corrected. Ms. Friedman stated she feels the fine should be significant enough to cover all the costs. She stated the fine should be large enough to rectify the situation if the homeowner will not correct it. Ms. Frick stated if they go to Court the Township has to pay attorney fees and there would not be money enough to purchase machinery to do the maintenance. Ms. Friedman stated she feels they could rent the equipment. Mr. Dresser stated it is \$75 to rent the machine. Ms. Friedman stated they do need to know what the fine would be and not just the re-visit fee of \$25. Ms. Frick stated it should be noted that this is private property, and this would require the Township to go onto their property. Ms. Friedman stated this was why she asked if it was allowable.

Ms. Friedman stated they are getting more consideration for pervious versus impervious surface to do this. Ms. Frick stated the next person that purchases the property would not necessarily know that. Ms. Friedman asked how obvious could they make it when the property transfers from one individual to another that this situation exists. Mr. Bray stated they address this in Item #2 of their response letter. Ms. Frick stated they do not even know when a property sells. Mr. Dresser asked about the Transfer Tax, and Ms. Frick stated that does not go through her. Ms. Friedman asked if Doylestown would know, and Ms. Frick stated they would. Ms. Friedman stated this should then be submitted to Doylestown because it is an important consideration of pervious versus impervious coverage.

Mr. Fried asked if they could carve out Residential for the moment and see an Ordinance that would be non-Residential. Ms. Friedman stated she feels some of the same things would apply to non-Residential; however, Mr. Fried stated he feels it would be easier to handle Commercial since it is larger with more impact, and there is more continuity. Ms. Frick stated if they did this the Township could be learning at the same time. Mr. Fried stated there would also be more professionals involved with non-Residential. He stated they could see how that goes and from there use that experience when they consider Residential. Mr. Koopman stated it seems that they are suggesting that it be applied to other than single-family detached residential dwellings; and it could apply to apartment complexes, Churches, commercial, and institutional. Mr. Fried stated he would ask the EAC to take a step back and scale it down to non-Residential, and if possible do a National search on the Internet for other communities that have done this. He asked that any information they find be forwarded to the Planning Commission before they come back. He also asked that they consider the other issues raised this evening which were process issues.

Mr. Bush asked Mr. Koopman if he had any information about Item #2 on their list as to how future property owners would be advised. Mr. Koopman stated there would need to be a Recorded document or it may not be legally enforceable. He stated this is another reason it may be easier to start with non-Residential because those facilities normally have Development Agreements that are Recorded. Mr. Koopman stated normally those types of facilities also have someone in charge of maintenance so this may be a logical place to start.

Mr. Dickson noted Item #10 of Exhibit 8 and he suggested that they work with Mr. Koopman as to the enforcement provisions and penalty provisions.

Mr. Koopman stated if they were to have 1,000 square feet or more, there would be an Operations and Maintenance Agreement that would get Recorded. Mr. Bray stated he feels it would be good to start with Commercial since this is where they are dealing with larger volumes and more impervious surface than the individual homeowner. He stated possibly in the future, they could consider Residential as well. He stated what has been provided would pertain to Commercial; and while they are not attorneys, he feels Mr. Dresser did a wonderful job writing up a sample Ordinance. He stated as to enforcement provisions and legal language, they would need to defer to the Township solicitor. Mr. Bray stated they would like to be able to move ahead with the Condition that it would just apply to Commercial, nursing homes, schools, etc. Mr. Bush stated it would be anything other than single-family detached Residential. Mr. Koopman stated they will have to consider this further, but he feels it would be other than a place where it would be a homeowner that would be responsible for the pervious paving.

Ms. Frick stated the Township engineer is more involved when there is Land Development and the inspections would probably therefore be done by the Township engineer as opposed to the Road Department.

Mr. Fried stated he is concerned that Township finances are a precious resource so he would like to get guidance from either the Township Manager or the Supervisors as to how quickly this should be moving forward due to the expense involved using the solicitor and the engineer's time to consider this Ordinance. He stated he does not feel comfortable spending the Township's money without getting more information about this. Mr. Bush stated the Supervisor liaison is not present this evening, and Mr. Fried stated he would like to wait until the liaison is present. Mr. Bush stated Mr. Stainthorpe is aware of what they are working on. He stated the EAC also has their own Budget, and they would be willing to use some of their Budgeted money. He stated it does not appear from what Mr. Koopman has indicated that it will take a lot of legal time to come up with the enforcement provision. Mr. Bray stated he feels that the EAC has probably done 90% of the work. Mr. Koopman stated his office has not really looked at this other than just in connection with the proceedings before the Planning Commission because they do not spend legal time without authorization from the Board of Supervisors. He stated he does feel it would be good to get it to the Supervisors or the liaison to see if the Supervisors are prepared to address this and spend money to get it done. Mr. Koopman stated this could be done through the liaison or the Planning Commission could make a recommendation to the Board of Supervisors this evening.

Mr. Bray stated the EAC has a meeting in two nights, and they will discuss this with their liaison, Mr. Dobson. Mr. Bray stated the Board of Supervisors would be interested in whether it is going to cost \$2,000 or \$20,000. Mr. Bray asked Mr. Koopman if he would have an idea as to his costs to review this. Mr. Koopman stated if the Township is going to proceed with this, the solicitor will have to review it eventually. He stated their hourly rates are fairly reasonable; and while they would look at it in an expeditious manner, there are certain enforcement provisions and other issues regarding successor property owners which are legal issues that have to be addressed. He stated the Supervisors need to decide with guidance from the Township Manager and the Commissions as to whether they want to take the next step. He stated they may decide to put this matter on their own Agenda for discussion.

Mr. Fried moved and Mr. Dickson seconded to advise the Board of Supervisors that based on the initial review of the Ordinance presented by the EAC there have been several issues raised that could require the expenditure of Township resources such as enforcement issues and making sure the Ordinance provisions are binding upon and enforceable against successor property owners which will need to be reviewed by the Township solicitor. The solicitor should also consider whether this will involve a Zoning Ordinance Amendment. The Township engineer should determine Permitting and proper

initial and ongoing inspection practices. Furthermore the Planning Commission recommends limiting the initial Ordinance to non single-family detached Residential dwellings.

Mr. Bray asked if this means they will have to come back again to the Planning Commission, and Mr. Koopman stated he feels the Board of Supervisors will give direction on whether they want this to come back to the Planning Commission or that it will be taken directly to the Board of Supervisors. Ms. Frick stated she understands that it is the wish of the Planning Commission to find out if the Supervisors are willing to allocate enough money and to review it again once they get the input from the Township engineer and solicitor, and Mr. Fried stated he would like to have it come back to the Planning Commission before it goes to the Board of Supervisors so that the Planning Commission has the opportunity to fine tune it. Mr. Koopman stated he feels it will have to come back to the Planning Commission because it will require an Amendment to the Zoning Ordinance since impervious surface is a Zoning requirement.

Motion carried unanimously.

There being no further business Ms. Friedman moved, Mr. Pazdera seconded and it was unanimously carried to adjourn the meeting at 8:45 p.m.

Respectfully Submitted,

John Pazdera, Secretary