

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – FEBRUARY 13, 2012

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on February 13, 2012. Chairman Dickson called the meeting to order at 7:40 p.m.

Those present:

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

Others: Nancy Frick, Director Zoning, Inspection & Planning
 Nate Fox, Township Solicitor
 Judith Goldstein, Township Engineer
 Dobby Dobson, Supervisor Liaison

Absent; Karen Friedman, Planning Commission Secretary

APPROVAL OF MINUTES

Mr. Pazdera moved and Mr. Bush seconded to approve the Minutes of January 9, 2012 as written. Motion carried with Mr. Fried abstained.

#616-A – NEW CINGULAR WIRELESS PCS, LLC d/b/a AT & T – DISCUSSION
AND RECOMMENDATION OF APPROVAL OF CONDITIONAL USE
APPLICATION

Ms. Kate Durso, attorney, was present. Ms. Durso stated they are continuing with the upgrades in the Township for their 4G services, and this is an upgrade to the existing facility located behind the Township Building. She stated there are currently nine antennas at the 141' elevation, and they are proposing to add three more at the same elevation along with additional equipment within the shelter at the base. She stated they have submitted a structural analysis, and it matches the prior structural analysis previously submitted to the Township for Clearwire. She stated they are scheduled to go before the Board of Supervisors with the Conditional Use Application Wednesday evening.

Ms. Durso stated there was one comment from the Township engineer requesting that they add the height of the fence on the Plan, and they have done so. She stated they are not changing the fence in any manner. It is 8' high with barbed wire.

There were no public comments.

Mr. Pazdera moved, Mr. Bush seconded and it was unanimously carried to recommend to the Board of Supervisors approval of the Conditional Use Application for the Plans last revised 1/3/12 subject to compliance with the Remington & Vernick letter dated 2/1/12.

#560-A – FERRI TRACT a/k/a FREEMAN'S FARM @ MAKEFIELD PRELIMINARY PLAN DISCUSSION AND RECOMMENDATION

Mr. Edward Murphy, attorney, was present with Mr. Larry Young, project engineer. Mr. Murphy stated these Plans were conceived with this particular Applicant almost three years ago, and it has been through a number of different revisions the most recent one having been submitted mid-November of last year. He stated they have received various review letters on the Revised Plans. Mr. Murphy stated since they were last before the Planning Commission last summer, there have been a number of Permits issued by other regulatory agencies.

Mr. Murphy stated they received the jurisdictional determination from the Army Corps of Engineers which was a threshold issue that everyone wanted resolved before they moved forward because there were questionable areas along the property frontage on Big Oak Road; and depending on the determination, there was some question about the need for a reconfiguration or relocation of the entrance. Mr. Murphy stated the JD has confirmed what the Applicant felt was the case, and they did not have to make any significant adjustments to the entrance.

Mr. Murphy stated they also received the adequacy letter from the Bucks County Conservation District and last week they received the NPDES Permit for the project which is the more complete review and recommendation of approval by the DEP of the stormwater plans. He stated this addressed a lot of the uncertainty that other groups may have had about their stormwater approach to the project. He noted the NPDES Permit is dated 2/9/12 and the adequacy letter from the Conservation District is dated 12/20/11.

Mr. Murphy stated they have also received an updated TPD review letter dated 12/21/11, the Remington Vernick sewer review letter dated 12/27/11, the Bucks County Planning Commission letter dated 1/6/12, and the 1/16/12 review letter from Remington Vernick. He stated more recently they received a copy of the 1/31/12 review letter from the Township's EAC.

Mr. Murphy stated the TPD letter discusses signage and requests copies of updates, and they will comply with the items in the 12/21/11 letter.

Mr. Murphy stated the items in the 12/27/11 letter from Remington & Vernick regarding the sanitary sewer issues are either “will comply” or they will work them out with Mr. Hoffmeister and the Sewer Department.

Mr. Murphy noted the 1/16/12 letter from Remington & Vernick and stated Page 1 and most of Page 2 is a summary of the project and the review letters that have been received throughout the course of the project. Mr. Murphy stated Page 2 and Page 3 includes the Waivers that have been discussed at prior Plan reviews.

Mr. Murphy stated Item #2 deals with the width of the wetlands buffer. Mr. Young provided this evening an exhibit that addresses that comment and shows that they will comply with the latest recommendation and increase the width of the buffer from 50’ to 75’ adjacent to the drainages areas located in the center of the site. Mr. Young stated one of the previous Plans did have it at 75’, but there had been a comment requesting that they reduce it to 50’ which they did; however, they then received another comment asking that they increase it to 75’ so they will do this.

Mr. Murphy stated Item #3 discusses whether the cartway width within the project should be reduced to 24’ which was a recommendation from the Low Impact Development Ordinance. He stated previously everyone felt this was a good idea, but they need to firm this up with the Planning Commission.

Mr. Murphy stated they will comply with Item #4. He stated with regard to Item #5, they have sent the Plans to Falls Township, and they are waiting for their comments. He stated they will comply with Items #6, #7, and #8.

Mr. Murphy noted Item #9. He stated the Conservation District adequacy letter dated 12/20/11 has been received. He stated they have also received the 1/6/12 review letter from the Bucks County Planning Commission, and the Remington & Vernick sanitary sewer update dated 12/27/11. He also stated the NPDES Permit has been received. He stated PennDOT and Falls Township reviews are pending.

Mr. Murphy stated he does not feel the 1/6/11 Bucks County Planning Commission letter has anything different from what has been previously considered.

Mr. Murphy noted the 1/31/12 EAC letter. He stated the first item discusses the adequacy of the wetlands buffer, and Mr. Murphy stated since they are going to make it 75’ this should address that item. Mr. Murphy stated Item #2 is addressed through the now-issued NPDES Permit in terms of stormwater. Mr. Murphy stated they will comply with Item #3.

Mr. Murphy stated Item #4 discusses potentially adding two new inlets which they can add. He stated with regard to the issue of pre-treatment, there are inserts you can put in the inlets to provide for this, but the Township may have an issue with this since those inlets are within Township rights-of-way so this will be a maintenance issue for the Township, and historically the Township engineer did not prefer those. Mr. Murphy stated this is an issue they will defer to the Township staff.

Mr. Murphy stated Item #5 discusses replacement trees, and they will comply. Mr. Young stated they are part of the Plan, and there are 231 proposed trees, 97 of which are replacement trees.

Mr. Bush stated at some point he felt there was a discussion about the left hand side of the property about water or a gully that was not accurately depicted on the Plan. Mr. Young stated he did not recall a discussion about that location, and he noted another area of the Plan which had been discussed. Mr. Murphy stated he recalls that someone raised a question about this property accepting stormwater from the adjacent property that was flowing toward the rear of the proposed lots near the basin at Big Oak Road. Mr. Young showed the general direction of flow which is from west to east, and the off-site adjacent properties flow onto the Applicant's property.

Ms. Karen Gates, 955 Big Oak Road, stated she felt the comment about the ditch was that water is running west to east and there is a drainage ditch between her farm and the Ferri Tract for the entire length which then takes the water to the road. Ms. Gates asked what trees are being replaced, and Mr. Young noted on the Plan where trees will be taken out. He also noted areas where replacement trees will be planted. Ms. Gates noted on the Plan an area where trees were proposed to be planted, and she stated there had been a discussion about there being a perimeter of trees at a location she showed on the Plan so that there would not be headlight issues. Mr. Young noted the location of existing trees; however, Ms. Gates stated those trees are deciduous, and they had been assured that there would be evergreens planted along the line so they would not see headlights. Mr. Murphy stated they could re-allocate the replacement trees to fill in the gaps.

Ms. Goldstein stated the Applicant's landscape architect/engineer could walk the site with the Township engineer, and they could determine where the appropriate location would be to augment the existing buffer; and this was acceptable to Mr. Murphy.

Ms. Jennifer Yang 32 Howley, stated she just moved in and she asked about the drainage plans adding that there is an underground creek. Mr. Young showed on the plan how the water flows. He stated their site will be contained in the curb line of the road and any impervious surface will drain into the roadway and will not go to the south side, but toward Big Oak Road. Ms. Yang asked how close the road is to her property line, and Mr. Young stated it is approximately 20'. Her property was shown on the Plan, and Mr. Young also showed her the location of the tree line.

Mr. John Bossman stated he is a former resident of 15 Hilltop Drive and he has a vested interest in this property where his parents still live. Mr. Fox asked Mr. Bosman if his parents are present this evening, and it was noted that they are. Mr. Bosman stated he grew up in this area. Mr. Fox stated while it is up to the Board, the property owners should speak on this issue as they have standing; however, the Planning Commission agreed to permit Mr. Bosman to speak on their behalf.

Mr. Bossman stated he feels some items are being neglected, and Mr. Dresser from the Township's EAC has issues with the project. Mr. Bossman stated the property is a "bowl," and it wants to be a wetland. He stated there is also an underground stream. He stated everyone who borders this property on Hilltop, Howley, and Hedgerow has water issues as more and more development goes on. He stated he has done a lot of remediation work for people.

Mr. Bossman asked if the driveways will be impervious material, and it was noted they will. Mr. Bossman stated everyone will have to have a sump pump, and Mr. Young agreed. Mr. Bossman asked where the water will go, and Mr. Young stated it will go into the basins. Mr. Bossman stated the basins have a leak that goes right on to Hilltop and Howley. Mr. Young stated the basins do not drain toward Hilltop, and they drain toward the street. Mr. Bossman stated he is not talking about surface water, but is talking about ground water. He stated Rock Run Creek has numerous branches, and there is a spring on the property. Mr. Bossman stated the more they put the water in a pipe, the more impact will occur.

Mr. Bossman stated the design for the project was for the two-year storm, and the norm is a fifty-year storm. He reminded the Board about the Hurricane last year. He stated what has been proposed is inadequate, and it will impact the existing residents.

Mr. Bossman stated he questions if they will be able to sell fifteen houses in this economy.

Mr. Bossman stated the road they want to put in cannot be done because it is too narrow. He stated if they put a chain across the contractors will go through, and they will start parking on Hilltop. Mr. Young stated this is only an emergency-access road. Mr. Bossman stated he is concerned when the development takes place, and they are cutting the road; and all the contractors will want to take a short cut.

Mr. Bossman stated a few years ago they asked to see the hydrological studies that were done, but he never saw anything.

Mr. Bossman stated he feels the developers want to do it quick, get the money, and leave; and it will effect the existing neighbors.

Mr. Alan Dresser, EAC, stated he has not had a chance to look at the new buffers. He stated he assumes they are going to draw another Plan with the 75' buffer. Mr. Young stated the previous Plan did have the 75' buffer. Mr. Dresser asked why they did not go to a 100' buffer near Big Oak Road since the grass is clearly less than 12" in height and therefore requires a 100' buffer. Mr. Young stated his client had several discussions with the previous Township engineer for two to three years, and they have determined that they will provide a 75' buffer as the Township engineer's letter requires. Mr. Dresser asked about the Sales trailer, and Mr. Young stated they will have to reposition the Sales trailer as it was positioned for a 50' buffer. Mr. Young stated they want to use the existing driveway for the entrance. Mr. Murphy stated the trailer will be outside of the 75' buffer. Mr. Dresser asked where the cars will go, and Mr. Murphy stated the location of the trailer will be determined by the Township. Mr. Dresser stated the parking lot will also have to be outside of the buffer.

Mr. Dresser stated they have claimed that from the pre-development to post-development, there is no increased stormwater run off for the two year storm; and Mr. Murphy stated this is what the State has indicated. Mr. Dresser asked what this was based on. He stated when you do it according to the Township's stormwater rules, you come up with about 370,000 gallons of additional run off after development. He stated the only way they get no run off is if they assume eleven acres of the property at locations he showed on the Plan is row crops from which you get a lot of run off. He stated you get very little run off from meadow. Mr. Dresser stated when the Permit came in, in February, 2009 it established the pre-development date; and you look at conditions at that time. He showed photos which show that there are no row crops. Mr. Young stated the environmental report was done in 2010. Mr. Dresser stated there were no row crops then either. He stated the pictures were taken in 2008. Mr. Murphy stated the standard that DEP applied when the Application was made was on row crops and not meadow. Mr. Dresser stated the pre-existing condition was not row crops.

Mr. Dresser stated every other development he has seen has always used pre-development as the date when they come in and post-development after they are constructed. He stated his contention is that there is a lot of stormwater run off after development in the two-year storm, and that there is an Ordinance that should be looked at. Mr. Dresser read from the South Delaware Stormwater Ordinance which he had included in his comments. He reviewed other problems with water in the area.

Mr. Dresser stated they also do not comply with the Groundwater Recharge Infiltration Ordinance which requires that a certain amount of runoff generated by the development must be infiltrated. He stated he checked with the County, and they agreed with him that this is important. He stated if run off is coming from an adjacent property, you have no control over what they are going to do in the future; and they may decide to divert that water somewhere else or build a home there. Mr. Dresser stated he feels they need to

correct this or get a Waiver. He stated the way to correct it would be to eliminate one of the homes and put in some infiltration where there is good soil. He noted areas on the Plan where there is good infiltration which they are not using.

Mr. Murphy stated they already have the NPDES Permit.

Mr. Dresser discussed pre-treatment at Inlets 22 and 23, and he stated the concern is that they are going to get runoff from the road which is always highly polluted. He suggested that they drain it back to the detention basin. He stated if they get a twenty-five year storm or greater, the flow might reverse itself and come back onto the road and flow down the road; but he feels if they get twenty-five years of pollution control it might be worth it for that one twenty-five year storm. Mr. Dresser stated they could also put in quality-control snouts and make it the responsibility of the Township or the Homeowners' Association to take care of them. Mr. Murphy stated the homeowners are not going to maintain an improvement in the Township right-of-way. Mr. Murphy stated he already indicated that they would put these in if the Township wanted to maintain them.

Ms. Goldstein stated the prior Township engineer did not recommend the inserts in the inlets. She stated she will take this issue back to her office and look into this further. Ms. Goldstein stated from an engineering perspective, they would not recommend that a twenty-five year storm be permitted to surcharge onto the public roads as they would see this as a health, safety, and welfare issue; but they will look into the water-quality issue.

Mr. Norm Sutton, 28 Hilltop, noted the location of his home on the Plan, and he asked how close one of the new homes he showed on the Plan will be to his property; Mr. Young stated it will be approximately 40'. Mr. Sutton asked the impact from drainage from that property onto his property, as currently he gets water from there. Mr. Young stated that property will drain away from Mr. Sutton's property. Mr. Sutton stated currently he has water and he asked how it will drain away from him. Mr. Young stated the back yard will drain that way, but the impervious surface will drain toward the road. He stated they are taking most of the water and bringing it away from his property. Mr. Sutton stated the water does not drain the way the Applicants are telling them. He stated the water runs down Hilltop Drive. He stated his sump pump runs two to three times an hour. Mr. Young stated they will be grading the site and only the rear yard will drain as it does currently. Mr. Sutton stated when the homes are built he is going to have more problems than he has now. Mr. Sutton stated he is also concerned with the access because if two cars are parked on either side, an emergency vehicle will not be able to get through.

Mr. Tom Haerther, 48 Howley, stated his rear yard has approximately 155' of frontage along the property in question all of which drains toward him. He stated he has an aquifer that runs under his house, and after spending thousands of dollars he no longer has water in his basement. He stated the problem has gotten considerably worse over the twenty years he has lived there. Mr. Haerther stated the pitch being shown on the Plan is not accurate. He stated this will exacerbate what is already a bad situation. He noted a strip of woods on the Plan and stated it has sunk three feet over the last ten years. He stated he is not against development but is against bad stewardship; and if this exacerbates the problem, they are going to get sued.

Ms. Barb Tantalla, 12 Hilltop, stated she has major water problems now, and just had to waterproof her basement and she asked that they not make the situation any worse for them.

Ms. Yang asked how the Planning Commission will look into this and who she should contact at the Township. Ms. Goldstein stated stormwater reports and calculations have been reviewed for some time by the prior engineer, and they have no reason to question the work that he did, and Permits have been issued by the Conservation District and from DEP. She stated the calculations have been reviewed and the developer has met the Ordinance requirements for their design parameters. Ms. Yang stated people are living there, and she is getting the idea that someone has not really looked at the situation. Ms. Goldstein stated the Applicant's engineer could review the report with her. Ms. Yang stated it seems that they are just talking about calculations, and they should go there and look at the situation. Ms. Goldstein stated the Applicant has designed the project to detain and infiltrate a certain amount of stormwater. She stated they would not be able to go out to the site and measure what would theoretically happen due to a development that is not built yet. Ms. Yang asked what they will do if this is built, and they are all living in a "swamp;" and Ms. Goldstein stated if they are concerned that someone is harming their property, there would be recourse. Ms. Yang asked if the Township will help them resolve this issue.

Mr. Fox stated there cannot be any redress from a hypothetical condition. He stated the Planning Commission has heard the concerns and the Applicant has gone through layers of State, County, and local Government approval. He stated the Applicant's professionals and the Township's professionals have looked at the Application. Mr. Fox stated the residents have the right to make their voices heard, and they would have this right if there is a condition that is exacerbated; but they cannot address a hypothetical condition. Ms. Yang stated they are not feeling like they will be protected and she feels like no one will help them.

Mr. Dickson stated he does not know what help it is they are looking for since she is talking about a hypothetical condition. Ms. Yang stated if there is a problem, she is asking if the Township will help them address the issue. She asked what they would do if they do get flooded. Mr. Dickson stated the Township engineer reviews the Plans and advises the Planning Commission. He stated the Planning Commission does not approve any Plan unless the Township engineer advises them that it is scientifically appropriate for the Ordinances that the Township has passed. Ms. Yang asked what would be the residents' protection after development if something happens. Mr. Dickson stated the Township engineer is providing feedback on the Plans and this safeguards their rights by having a Township engineer and not relying solely on the Applicant's engineer. He stated the Plans are being reviewed to make sure that they correspond to the Township Ordinances.

Mr. Fox stated Ms. Yang's redress would be the same as any other homeowner in the Township; and if she feels the Township has done something to cause a problem, she can call the Township, and the Township engineer will be consulted. If there is an issue, she would have the same rights as any other homeowner who has a problem. He stated there have been many levels of review, and this is the same process for every development that happens in the Township.

Ms. Goldstein stated if Ms. Yang wants information about the design, she could contact the Applicant's engineer who designed it. Ms. Yang stated she would like a contact at the Township, and Mr. Dobson stated she can call the Township and ask for the Township Manager, Terry Fedorchak, who will direct her.

Mr. Sutton asked if the Township Manager has gone to the site since if he did, he would see the water run off. Mr. Dobson stated he does not know if Mr. Fedorchak has seen the site.

Mr. Murphy stated they are re-grading the site to redirect the water. He stated that after development the Plans show that the water will be redirected away from the adjacent properties.

Mr. Bossman expressed concern with Plans other engineers have prepared in the past in other areas of the Country which have resulted in problems. He stated they are going by data that has been prepared by an engineer who was paid by the developer, and the engineer has not been out to the site. He stated the water problems are real. Mr. Dickson stated he already indicated that it is not a unilateral review, and they have Township engineers to make recommendations. He stated it is not just the Applicant's engineer. He stated the Planning Commission has correspondence from the Conservation District, Bucks County Planning Commission, and the Township engineers all of whom addressed the stormwater issue. He stated they would not recommend approval if they were not comfortable with what the Applicant is saying. Mr. Bossman stated the

Planning Commission agreed to have an independent study, and he does not see that this has been done. Mr. Pazdera stated he does not recall this. Mr. Bossman stated he feels it would be a good idea. Mr. Fox stated this would not be within the purview of the Planning Commission.

Mr. Fried stated the Applicant has not done any extensive construction or change to the land at this time, and Mr. Young agreed. Mr. Fried stated if nothing happens, the same problems would exist, and Mr. Young agreed. Mr. Fried stated he understands that they propose to do re-grading so that instead of the water continuing down and flowing through, it will be redirected into the stormwater management system; and Mr. Young agreed and added it will go to the system that goes to Big Oak Road. Mr. Fried stated this process has been reviewed by the Township engineer, the County, and the State; and the Planning Commission has received back from each of those reviewing agencies who have their own process feedback that the Plans and the system that the Applicant has presented will work the way they say it will work according to the Township Ordinance. Ms. Goldstein stated this is correct and also by State regulations. Mr. Fried stated there is no one else who needs to sign off the stormwater portion, and it was agreed that this is correct. Ms. Goldstein stated this is standard protocol required by the MPC and State regulations.

Mr. Murphy stated unlike other projects, this project has “languished” for so long that they have in hand before any recommendation is made by a Township Board or Commission, the actual NPDES Permit which is unprecedented. He stated normally an Approval would be conditioned on receipt of that Permit, and they actually have it because the project has been reviewed for over five years.

Mr. Fried stated if there is a problem after the project is completed, the Township would go out to make sure that the Applicant completed the construction according to the Approved Plans, and Ms. Frick stated there is ongoing inspection. Ms. Goldstein stated their inspectors will be out there during construction to make sure everything is done according to the Plans so that everything will function as designed.

Mr. Fried asked if there is anything else they could do to look into the future to see if this will work, and Ms. Goldstein stated she does not feel that there is. Mr. Fox stated legally there is nothing else they could do either.

Mr. Bossman stated they are going with data presented by an engineer sitting in a room with a computer and not going out to the site. Ms. Goldstein stated her office just became Township engineer, and she has not visited the site; but she has known the former engineer, Mr. Majewski, for many years, and she knows that he would not issue a review unless he had gone out to the site.

Mr. Murphy stated he did provide an Extension with the expectation that the Planning Commission would make a recommendation this evening. He stated they will present the Plan informally to the Board of Supervisors Wednesday evening as a courtesy since there are multiple new members on that Board who may be unfamiliar with the Plan. He stated given the responses to the review letters, he anticipated that the Planning Commission would take action this evening. He stated this is only a Preliminary Plan.

Ms. Frick stated the Township did receive the NPDES Permit, and it was included in the Planning Commission packet. Mr. Dickson noted the TPD letter, and asked if they will comply with Item #2; and Mr. Murphy stated they will comply. Mr. Dickson also asked about Item #23, and Mr. Murphy stated they will comply.

Mr. Fried asked if there was anything they would not comply with from the review letters received. Mr. Murphy stated they are in agreement with all the review comments aside from the EAC comments. Mr. Murphy stated the only issue was with the 12/27 Remington Vernick sewer letter he previously noted, and they will discuss this with the Sewer Administrator, and they will comply with what the Township indicates. He stated they will also work with the Township on the relocation of the trees.

Ms. Frick stated they will be appearing before the Board of Supervisors on Wednesday just for informal purposes.

Mr. Fried moved, Mr. Pazdera seconded and it was unanimously carried to recommend to the Board of Supervisors Approval of the Preliminary Plan for the Plans last revised 11/17/11 subject to compliance with:

- 1) 12/27/11 Remington & Vernick Sewer letter;
- 2) 1/6/12 Remington & Vernick letter;
- 3) Bucks County Planning Commission letter dated 1/6/12;
- 4) The Applicant has agreed to meet with the Township engineer in order to relocate some trees to effectively block the headlights that could shine to the adjacent properties and will provide a denser buffer;
- 5) Compliance with the 12/21/11 TPD letter.

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Mr. Dickson stated the Board of Supervisors will meet on Wednesday night and Mr. Murphy will be appearing again at that meeting, and those present this evening could also make their comments known at that time as well.

There being no further business, Mr. Pazdera moved, Mr. Bush seconded and it was unanimously carried to adjourn the meeting at 9:00 p.m.

Respectfully Submitted,

Dean Dickson, Chairman