

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES - MAY 4, 2011

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on May 4, 2011. Vice Chairman Stainthorpe called the meeting to order at 7:30 p.m. Mr. Smith called the roll.

Those present:

Board of Supervisors:       Pete Stainthorpe, Vice Chairman  
                                      Ron Smith, Secretary  
                                      Dan McLaughlin, Treasurer  
                                      Matt Maloney, Supervisor

Others:                         Terry Fedorchak, Township Manager  
                                      David Truelove, Township Solicitor  
                                      James Majewski, Township Engineer  
                                      Kenneth Coluzzi, Chief of Police

Absent:                         Greg Caiola, Board of Supervisors Chairman

**DISCUSSION AND MOTION OF TOWNSHIP SOLICITOR AND LEGAL SERVICES FOR THE REMAINDER OF 2011**

Mr. Stainthorpe stated normally Public Comment is held at the start of the meeting. He stated Mr. Truelove has chosen to leave Curtin & Heefner and to join a different firm; and the Board needs to make a decision this evening whether they will continue with Mr. Truelove's services or continue with Curtin & Heefner. Mr. Stainthorpe stated the Board felt they should have this discussion prior to Public Comment in case the Solicitor's opinion is required during Public Comment.

Mr. Truelove stated he has been with Curtin & Heefner for fourteen years, but he has been provided an opportunity to move his practice to Hill Wallack located at 777 Township Line Road in Lower Makefield. He stated they also have a large office in New Jersey. He stated he has been asked to be Chair of their Municipal Section in Pennsylvania, and this will also provide him with the opportunity to expand his practice. Mr. Truelove stated he made this move effective Monday, May 2. He stated he was unable to notify any of his clients prior to notifying his partners at Curtin & Heefner. Mr. Truelove stated he notified the Board of Supervisors and also recommended that some of the items including the Dalgewicz matter, the Liberty Towers matter, and the Sewer Authority matters stay with Curtin & Heefner. He stated he did leave Curtin & Heefner amicably.

Mr. Stainthorpe stated technically the appointment that was made in January was for Curtin & Heefner as opposed to David Truelove specifically; and the Board needs to decide this evening whether to continue with Curtin & Heefner, appoint Mr. Truelove as solicitor for the balance of the year, or open up a full review and have others come in and interview as solicitor. Mr. Stainthorpe stated there are, as noted by Mr. Truelove, some pending cases which he feels should stay with the attorneys who are handling them now. He stated these are specialized, highly-technical cases; and he would be concerned about changing these to a different attorney.

Mr. Smith stated they had a similar issue several years as it related to the appointment of the Township engineer. Mr. Smith stated he is comfortable with Mr. Truelove continuing as Township solicitor, but noted there are other attorneys at Curtin & Heefner who are handling cases for the Township. He stated at the beginning of the next year, whoever is serving on the Board could make a decision as to which firm should serve as solicitor.

Mr. Maloney stated he is comfortable with Mr. Truelove continuing as the general solicitor for the rest of the year noting that they will go through the review process at the end of the year.

Mr. Maloney moved and Mr. McLaughlin seconded to appoint as the new Township solicitor, Hill Wallack, particularly David Truelove as the main solicitor; and that the work as defined by Mr. Truelove remain with the respective attorneys at Curtin & Heefner.

Mr. McLaughlin stated he feels it is irresponsible to change the solicitor with six months remaining on the appointment as there would be a significant learning curve for anyone being brought in new at this time. He stated he feels Curtin & Heefner has demonstrated a good track record on those cases which it has been decided should be kept with Curtin & Heefner.

Mr. Stainthorpe asked for further clarification on the sewer matters, and Mr. Truelove stated Bucky Closser was specifically appointed to work with the Sewer Authority and is also involved in the renegotiation of the Agreement with Yardley Borough Sewer Authority. Mr. Smith stated he understands that the Sewer Authority and Mr. Hoffmeister are very comfortable with Mr. Closser so he does not feel they should make a change in this area.

Mr. Stainthorpe stated he concurs with the rest of the Board and to make a change on May 1, the learning curve for the new attorney would end up costing the Township a lot of money.

Mr. McLaughlin stated the rate will be the same, and Mr. Truelove agreed.

Mr. McLaughlin stated they did research Hill Wallack, and they feel very comfortable that they have the support staff needed; and they can be adequately served by Hill Wallack.

Mr. Harold Koopersmith, 612 B. Wren Song Road, asked if the law firm owns the account or does the partner/associate own it. Mr. Stainthorpe stated technically the Board appoints the professional firms, but they all serve at the pleasure of the Board; and they have decided to terminate certain parts of the work given to Curtin & Heefner and have them maintain some of the work. Mr. Truelove stated the client makes the ultimate decision. He stated once his announcement was made, each client he represented through Curtin & Heefner was provided a letter advising them of this change and giving them a choice. He stated since the Board of Supervisors is a public body, they need to make a public decision.

Ms. Virginia Torbert, 1700 Yardley-Newtown Road commended the Board for their decision.

Motion carried unanimously.

Mr. Truelove stated he had an amicable parting with Curtin & Heefner, and all parties are dedicated to providing effective service to the Township.

#### PUBLIC COMMENT

Mr. Harold Koopersmith noted a traffic condition on Oxford Valley Road which he had brought to the Board's attention some time ago. He stated the situation has been resolved, and he asked if it was know who fixed the problem. Mr. Majewski stated the Water Company did this work.

Ms. Virginia Torbert, Citizens Traffic Commission, stated last October they had a safe driving event, and Mr. Kelliher has indicated that the video of that event will be on the Township Website and the TV Channel shortly. Mr. Smith suggested that the DVD be sent to the Pennsbury School District to show on their channel as well since prom season is approaching. Mr. Fedorchak stated there are some difficult scenes shown, and they should consider this. Ms. Torbert stated there is a scene showing a graphic car accident, and she understands there will be a disclaimer.

#### APPROVAL OF MINUTES

Mr. Smith moved, Mr. McLaughlin seconded and it was unanimously carried to approve the Minutes of April 20, 2011 as written.

## UPDATE ON FEMA MAP MODERNIZATION

Mr. Majewski stated several years ago FEMA started the process to update and modernize their floodplain mapping. He stated the last time the floodplain maps were updated for Lower Makefield Township was in 1999; and over the last ten years things have changed, and there have been great advances in geographical information systems that allow the mapping of the floodplains to be more accurate. Mr. Majewski stated floodplain mapping helps to delineate the risk involved in living near waterways. He stated in 1968 the Federal Government established the National Flood Insurance Program; and in 1973, they required that flood insurance be purchased for homes within the floodplain. In 1994, they updated some of the requirements to require that they assess the flood hazard mapping accuracy at least once every five years to determine whether or not it needs to be updated. With the advances in digital technology, they are now able to put out mapping in a digital flood insurance rate map (FIRM).

Mr. Majewski stated there are several steps involved as part of FEMA's mapping update process with the first step being for FEMA to scope out the project and to hire consultants to update the mapping to modern standards. He stated this step has been completed. He stated the other steps include a community review period with a community meeting, final determination, and the final flood insurance study (FIS) and flood insurance rate map (FIRM) becoming effective. He stated the overall process can take ten to fourteen months.

Mr. Majewski stated FEMA has developed a preliminary digital flood insurance rate map and a new flood insurance study report. He stated they converted the existing flood insurance rate map to GIS-based digital mapping, and the new mapping conforms to the County maps and uses 2' contour topography and more accurately-depicts the topography of an area. He stated the previous flood maps used 10' contours. Mr. Majewski stated they also revised the map on a County-wide format; and although most of the floodplains have remained the same throughout the County, the one major change that effects Lower Makefield is they have done a new study for the Delaware River. He stated this was in response to the floods which occurred in 2004, 2005, and 2006. Mr. Majewski stated as part of the updating of the flood maps, they also revised the elevations to be referenced to the North American vertical datum of 1988 as the previous flood maps which currently exist were based on the 1929 flood datum.

Mr. Majewski showed some slides which show the difference between the current flood insurance rate map (FIRM) and the preliminary FIRM which has been updated. He stated this map is not yet official, and needs to go through a long process before it becomes official.

Mr. Majewski stated part of the process includes a community review period. He stated the preliminary flood insurance study (FIS) and the flood insurance rate maps (FIRM) were issued to all Bucks County communities on December 30, 2010. He stated the Township has been reviewing the maps and has made some editorial changes and have forwarded these to FEMA so that they can incorporate these into the maps prior to being released for the comment period. Mr. Majewski stated once the maps are set forth, there will then be a ninety-day public comment period for public review. Mr. Majewski stated Bucks County has come up with a GIS web-based mapping system where you can see how your property on a parcel level coincides with the new floodplain. He showed an overlay of the current FIRM with the parcel overlays and buildings highlighted with a red line showing the difference between the 100 year floodplain and the 500 year flood plain. He stated the 100 year flood plain is the area between the red line and the Delaware River to the right, and the 500 year floodplain is the area between the Canal and the red line.

Mr. Majewski stated the preliminary FIRM is also available on the County's web-based mapping system. He stated he has hatched in blue the current map, and the red line is the new map. He stated there are minor changes shown based on the updated topography which is more accurate and is based on the new flood study. He stated there will be a number of homes that are either in the floodplain where they were not before, are no longer in the floodplain, or partly in and partly out of the floodplain. He noted a number of examples which have changed based on the new mapping.

Mr. Majewski stated they want to put this information on the Township Website so that the residents can access the information and look up their own property and see the changes to the map.

Mr. Majewski stated a community meeting, open to the public, must be held to present the FIS and the FIRM. Mr. Stainthorpe asked if FEMA will hold this meeting; and Mr. Majewski stated the Township would hold the meeting, however, he would request that there be FEMA representatives present at that meeting to help explain the details of the National Flood Insurance Program.

Mr. Stainthorpe stated he received a call approximately two weeks ago from Congressman Fitzpatrick's office asking about the floodplain mapping in Lower Makefield so apparently word is out to the public, and they have started calling the Congressman's office. He stated people are concerned that they will now have to get flood insurance when they were not required to do so in the past. Mr. Majewski stated this is why he wanted to provide this update and also to have a meeting scheduled to invite all the residents effected by the change to the mapping so they can explain the information in detail to them.

Mr. Maloney asked if this information is already on the County Website or will the Township have to post this, and Mr. Majewski stated he would have to check with Bucks County whether this is available for general release yet. He stated he was provided a link where he was able to review some of the information in order to develop the slides he is showing this evening.

Mr. Maloney asked how the public can question the validity of the map, and Mr. Majewski stated they will meet with the community and review everything in detail. He stated they will be able to locate individual properties on the maps and indicate whether it is in or out of the floodplain. They will also review the Appeal process. He stated there is a ninety-day Appeal period after you give public notice of the maps being available. Mr. Stainthorpe asked if the Appeal is to FEMA or to the Township, and Mr. Majewski stated the Appeal is to FEMA. Mr. Smith stated he assumes the residents would have to file their own Appeal, and Mr. Majewski agreed. He stated Appeals must be supported by scientific and technical data. He stated they would have to provide proof that there is an error in the map that may have to be certified by a licensed professional engineer or land surveyor. He stated the topographical mapping was formerly on 10' contours, and it is now on 2' contours so the margin of error in the data is plus or minus a foot; and along the Delaware River, one foot can make a big difference whether or not you are in the floodplain. He stated FEMA acknowledges that they cannot get the mapping as accurate as they would like, and so they have this Appeals process. He stated there is a Letter of Map Amendment Form that is available which FEMA would evaluate and make a decision whether you can be removed from the floodplain. Mr. Smith stated it seems that this would be an expensive process to a homeowner to make their case as they would have to hire an engineer and possibly a surveyor as well; and Mr. Majewski agreed. He did note, however, that the floodplain has been "tightened up" in most locations since they now have more accurate mapping.

Mr. Smith asked Mr. Majewski if he has an estimate as to how many homes are effected negatively by the new mapping, and Mr. Majewski stated he does not feel there are a large number of properties that are negatively effected. He stated he has not yet completed his review property by property; but in general for the properties he has reviewed so far it has been favorable, and a property that was formerly in the 100 year floodplain, has been removed. He stated he does feel that there will be some properties where the mapping shows that they are now moved from either the 500 year floodplain to the 100 year floodplain or from not being in the floodplain to being within the floodplain.

Mr. Maloney stated with regard to the Appeals process, the burden of proof will be on the homeowner and FEMA will not be going out to take a more refined measurements. He stated this will be important to clarify with the residents and also to advise that this community meeting is not the forum for the Appeal but is to educate the public.

Mr. Stainthorpe stated he feels this community meeting should be a separate meeting and not part of a regular Board of Supervisors meeting. He stated the Board of Supervisors is not a part of this decision even though they are facilitating the informational meeting.

Mr. McLaughlin asked if most of the modifications are for properties in close proximity to the River or is the entire Township effected, and Mr. Majewski stated there are more people effected in a positive manner outside of the Delaware River and along the streams. He stated along the Delaware River, although the elevations have changed, there is not a great deal of change. Mr. McLaughlin asked Mr. Majewski if he has an estimate as to how many households will need to be contacted to come in and look at the maps. Mr. Majewski stated anyone who lives near a water way, stream, the River, etc. which would have a tendency to flood even if the flood frequency may be unlikely, would still need to be concerned about this. He stated a large number of people will need to be notified; but hopefully when the information is put on the Website and they are able to look up their parcel, people who see that they are no longer in the floodplain will probably not come to the meeting, although it could be a large number of people coming to the meeting.

Mr. Stainthorpe asked about the next step, and Mr. Majewski stated they should hold the community meeting in the near future and invite in all the residents effected. Mr. Stainthorpe asked the timeframe when this should take place, and Mr. Majewski stated it should be sometime in the next month. Mr. Stainthorpe asked about the timing for the ninety-day Appeal process, and Mr. Majewski stated he feels this timing would be set by FEMA. Mr. Maloney stated he feels it would be best to set the community meeting as early as possible and still provide notice since the ninety-day clock will begin running soon; and the longer the Township waits to hold the meeting, they will have lost some of that Appeal time. Mr. Majewski stated the “clock” has not yet started. He stated FEMA has been working with Bucks County Planning Commission to get parcel-level data mapping to the general public and to the Municipalities so they can determine who is being impacted by the changes to the mapping.

Mr. Stainthorpe asked if it is the Township’s responsibility to provide notification to the residents and send out letters, and Mr. Majewski stated it is the Township’s responsibility.

Mr. Majewski stated since the last update of the mapping ten years ago, there have been a lot of Letters of Map Amendments that have been filed by residents with proof that they were not in the flood zone. He stated as part of the updated mapping process, FEMA will revalidate the map changes and go through each of those to see whether or not they are still outside of the floodplain. Mr. Majewski stated there is a “grandfather” clause that indicates that if you have not purchased flood insurance and you purchase it after the map becomes effective, you will pay a higher rate; but if you have flood insurance now, your rates will not go up any higher than they go up typically for inflation. He stated you can

purchase flood insurance at the current rate before the map becomes effective; and you would then be “grandfathered in” and you would be paying the lower rate as opposed to the higher one. He stated he will review this at the public meeting with the residents. He stated someone from FEMA should be present to answer questions.

Mr. Fedorchak stated there are some important triggers that the Police and Public Safety rely on particularly as it relates to the Delaware River; and he stated the Action Stage is set at 15’, and Flood Stage at 20’. He asked if any of this will impact those numbers, and Mr. Majewski stated it will not. He stated those numbers are based on the gauge at Trenton. He stated for Lower Makefield, the flood stage of 20’ is appropriate.

Mr. Majewski stated after the ninety-day Appeal period is over, there will be a final determination by FEMA as to whether or not the map is acceptable; and once they get to that point, notice will be published in the Federal Register, and the FIS and FIRM will become effective. He stated Lower Makefield Township will need to update its Floodplain Management Ordinances within six months after the final determination. He stated this should be done anyway every ten years, and the Township did do this approximately ten years ago when the flood maps were updated based on the recommendations of FEMA at that time. Mr. Majewski stated there is a model Ordinance that can be used to put into the Township’s Ordinances. He stated this cannot be done until the map becomes effective since the Ordinance lists the date of the effectiveness of the map. He stated the FIS and FIRM once effective will be published and distributed by FEMA to all communities, and the maps will be available at the Township.

Mr. Majewski stated Lower Makefield is required to review the Preliminary Flood Insurance Rate Maps and make corrections, comments, and Appeals where appropriate. He stated they have been reviewing the map and will continue to do so. He stated the residents can come in and provide any detailed information they have that can be submitted to FEMA. He stated the next step is the outreach to the residents effected by the changes on the FIRM. He stated now that they have access to the mapping from the Bucks County Planning Commission, they can determine which properties are effected, and they can reach out to those residents and invite them to the public meeting. He stated the third action required of the Township is to adopt a new Floodplain Management Ordinance that meets the National Flood Insurance Program.

Mr. Stainthorpe stated he feels the Board should instruct the Township Manager and Township engineer to pick a date for the public meeting and contact the residents. He stated they should also make this information available on the Township TV Channel and Township Website.

Mr. Majewski reviewed Township requirements for work in the floodplain.

Mr. Majewski stated he will provide information to Mr. Fedorchak to post on the Website so that residents can look at the new flood maps and determine if there is any change to their property.

Mr. Jeff Benedetto, 22 Green Ridge, asked if you are positively impacted by the change and now fall outside of the floodplain, would you be notified of this since you would no longer be required to have flood insurance; and Mr. Majewski stated you would be notified. Mr. Benedetto asked when the maps will be posted, and Mr. Majewski stated it will be posted shortly. He stated FEMA Bucks County Map Update, takes you to a Website that has the updated mapping for Pennsylvania.

Ms. Virginia Torbert asked if there are maps of the areas that were flooded in 2004, 2005, and 2006; and Mr. Majewski stated there are aerial photographs of the area that was flooded in 2005. Ms. Torbert asked if any of the properties that are now considered to be out of the floodplain, were flooded in 2004, 2005, or 2006. Mr. Majewski stated the 100 year flood plain is 3' higher than where the water reached the last three floods.

#### APPROVE EXTENSION OF TIME FOR FLOWERS FIELD AT YARDLEY

Mr. McLaughlin moved, Mr. Maloney seconded and it was unanimously carried to grant an extension of time for Flowers Field at Yardley Revised Preliminary Plan to 8/20/11.

#### SUPERVISORS REPORTS

Mr. Smith stated the Disabled Persons Advisory Board is still in the process of identifying some businesses which have been very proactive in positively effecting disabled individuals and plan to present an award to one of them in the new future.

Mr. Maloney stated there will be a Hazardous Waste Collection on May 7 at 777 Township Line Road. He also noted on May 14 at 10:00 a.m. the EAC will host a lecture on geo-thermal/HVAC and other green ideas by a local business that installs geo-thermal systems.

#### AWARD CONTRACT FOR MOWING TOWNSHIP BASINS

Mr. Hank Hoffmeister was present and stated in the past few years the Township has contracted with approximately four lawn maintenance companies to do approximately 25 basins and open space areas in the Township. In discussions with Mr. Fedorchak at the end of last year, it was determined that they should attempt to increase the amount of basins to be contracted out. The Board has been provided the scope of work for one

company to do approximately 76 basins geographically from the railroad north to Upper Makefield/Newtown Township. He stated the Township staff will continue to do the basins, open space, and road banks from the railroad south to Falls Township.

Mr. Hoffmeister stated there are approximately 150 basins in the Township plus there is additional open space and road banks. He stated the proposal is for the Township to retain maintenance of Zone A and the road banks within Zones A, B, and C. He stated the total dollar amount being provided was for the purposes of Bid Bond and to provide the Board with an idea of the costs. Mr. Hoffmeister stated in order to serve the residents more effectively; he would recommend that the bid be awarded to Ken's Lawn Service for Zone B in the amount of \$17,076 and Zone C for approximately \$18,000. He stated this would be the maximum exposure the Township would have and is based on twelve mowings and a per basin/per mow cost. He stated this would be less than if they had the Township staff do all of the work.

Mr. Fedorchak stated it would be cost effective to do this, and he reviewed a number of prices being shown per cut/per basin. He stated if the Township staff were to do this all themselves, the expenses to the Township would be much greater.

Mr. McLaughlin asked if this was bid out, and Mr. Hoffmeister stated it was.

Mr. Hoffmeister stated they had sent out approximately eleven to twelve announcements, and they had only one other bidder. He stated they had five companies make the mandatory tour of the basins; and out of the five companies, only two bids were received. He stated one individual bid on both Zones, and the other bid on only one Zone in the amount of \$40,000.

Mr. Maloney moved and Mr. McLaughlin seconded to award the Contract to Ken's Lawn Service.

Mr. Smith asked if it is more cost effective to contract this out, why are they not expanding it to the other basins as well. Mr. Hoffmeister stated he had to make this determination; and in order to move away from a prior three-year Contract which was for 25 basins to a one-year Contract which encompassed more, he felt it should be done this way for this year. He stated this does not mean that it could not be changed next year so that there could be more or fewer basins with more Zones and possibly more Contractors.

Mr. McLaughlin asked if it would be cost effective to have this contracted out for all the Zones next year; and Mr. Fedorchak stated this may be possible but would depend on who bids adding that each contractor would only be able to perform a finite number of cuts, and Mr. Hoffmeister is trying to balance this out.

Mr. Hoffmeister stated last year they did cut contractors off because it was a dry season, and the dollars shown would be the worst case scenario; and if they have a dry season this year as well, they will not expend all of the funds.

Mr. Smith stated there has been a program to allow some of the basins to grow natural; and he asked if any of the basins that are included in the program are proposed to be mowed, or allowed to grow natural. Mr. Hoffmeister stated the majority of the basins listed are going to be allowed to go natural, but there are certain basins that because of their location and the type of structure they have in them will be mowed.

Mr. Fedorchak stated two years ago the Township spent \$130,000 on mowing detention basins, and the EAC and Board of Supervisors decided to reduce that number for very good environmental reasons. He stated this year they have budgeted \$90,000, and they have increased the number of basins that are included in the “no-mow program,” and they are seeing a certain measure of success. He stated this has also allowed them to reduce the number of personnel assigned to the task.

Motion carried unanimously.

#### CANCEL JULY 6 AND AUGUST 3, 2011 BOARD OF SUPERVISORS MEETINGS

Mr. Stainthorpe stated for the last few years the Board had been meeting only one time each month in the summer.

Mr. McLaughlin moved, Mr. Maloney seconded and it was unanimously carried to cancel the July 6 and August 3, 2011 Board of Supervisors meetings.

There being no further business, Mr. Smith moved, Mr. McLaughlin seconded to adjourn the meeting at 8:45 p.m.

Respectfully Submitted,

Ron Smith, Secretary