

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – MAY 5, 2015

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on May 5, 2015. Chairman Bamburak called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman  
Jerry Gruen, Vice Chairman  
Anthony Zamparelli, Secretary  
Keith DosSantos, Member  
Mark Moffa, Member

Others: Steve Ware, Keystone Municipal Services  
John Koopman, Township Solicitor (left meeting in progress)  
Mark Eisold, Township Engineer  
Barbara Kirk, Zoning Hearing Board  
Jeff Benedetto, Supervisor Liaison (joined meeting in progress)

APPEAL #13-1663A – GEORGE FOX III

Mr. George Fox, Ms. Lisa Fox, and Mr. Gregory Stern, attorney, substituting for Mr. Harris, attorney, were present. Mr. Stern stated he understands Testimony was received already, and they are hoping that the Board will act favorably on Mr. Fox's Application.

Mr. Bamburak noted they have a list of thirteen Conditions to go through, and he feels that the Board is leaning in favor of the Application provided that the Conditions are included.

Ms. Kirk stated at the last Hearing, Mr. Fox through his attorney, confirmed that the initial Application for a nursery use was withdrawn, and that he was proceeding with the Variance request under the Amended Application that was submitted. Ms. Kirk stated after all Testimony concluded at the last Hearing on April 7, she went through her Hearing notes and prepared a list of Conditions which was circulated to Mr. Harris and the Township Solicitor; and both of them provided reviews and revisions. She stated what was provided to the Board tonight was a final draft version of what was discussed by Mr. Harris and Mr. Koopman. She stated she understands that the Township is still a Party to the Application; but according to

Mr. Koopman today, he is here not to ask for any additional Testimony but to allow the Board to render its decision on the Application as Amended.

Mr. Koopman stated the Township Board of Supervisors is not taking a position in the matter and believes the matter should be left to the sound discretion of the Zoning Hearing Board. The Township's position however is that if the Zoning Hearing Board is inclined to grant the Approval, the Zoning Hearing Board should attach whatever Conditions the Zoning Hearing Board believes are appropriate to assure protection of the adjoining Residential neighbors.

Ms. Kirk stated the Application seeks Variances with respect to dimension and buffer requirements as set forth in the last Testimony. She noted the following Conditions:

- 1) Mr. Fox agrees that the maximum number of employees for the landscaping and design business would not exceed ten persons.

Mr. DosSantos stated he believes that the business is an incorporation or at least an LLC so Mr. Fox is technically an employee of the business entity so that the ten persons should include Mr. Fox plus nine; and Mr. Fox agreed.

- 2) No additional commercial structures or buildings to be constructed on the properties.

Mr. Fox stated previously they discussed his wish to build a pavilion on the property for his family; and the Board noted the key word in the Condition is "commercial," and Mr. Gruen stated what Mr. Fox is describing is a personal building. Ms. Kirk stated initially Mr. Harris indicated that there would be no more "commercial" buildings, and Mr. Fox agreed.

- 3) Proposed outdoor storage area and bins on Parcel No. 2-37-7 shall be positioned along the concrete retaining wall near the existing shop as shown on the Plan marked as Exhibit A-16 and shall not exceed 100 feet by 100 feet.

Mr. Fox agreed.

- 4) All business trucks and other vehicular equipment for the landscaping and design business shall be parked on Parcel No. 2-37-7 behind the existing shop building.

Mr. Fox agreed.

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Mr. Benedetto joined the meeting at this time.

Ms. Kirk stated she understands that Mr. Gruen had a concern as to employee vehicles, and she understood from her notes that everyone would be parking behind the existing shop building. Mr. Gruen stated he feels the employees should be able to park in the front if they wish, but not commercial vehicles. Mr. Bamburak stated the idea would be that at the end of the business day the vehicles would be stored behind the building, but during the day as people come and go, they should be able to park in the front.

Mr. Fox stated he plans on removing a lot of the stone and gravel to make it more attractive. Mr. Gruen stated that would be at Mr. Fox's discretion, and they would not have to park there.

It was agreed to add to Condition 4 – "All Fox-owned business trucks..."

- 5) No more than five business trucks and other vehicular equipment shall be stored outside on Parcel No 7 for the landscaping and design business, and no commercial vehicles with gross vehicle weight exceeding 26,000 pounds shall be stored on the properties.

Mr. Fox stated he felt they discussed not having any more than five vehicles outside lettered "Fox Landscape and Design," adding that he does own a skid-steer, a mini excavator, and a second wheel loader. Mr. Bamburak stated they do not intend those to be included in the number.

Mr. Stern stated Mr. Fox also told him that he owns a trailer to move the equipment around.

Mr. DosSantos suggested and it was agreed to add the following to Condition #5

- "No more than five motorized registered business trucks and other vehicular equipment shall be stored outside..."

Mr. Bamburak stated other vehicles could be stored inside.

Mr. Fox agreed to this Condition.

- 6) No retail or wholesale sales of hardscaping or other materials shall occur at the properties, nor will the Applicant become a distributor of hardscaping products from the properties.

Mr. Fox agreed.

- 7) No areas of properties shall be leased or rented to other contractors or persons. The small garage on Lot 7 may be leased to individuals for the storage of non-commercial vehicles.

Ms. Kirk stated this Condition reflects the fact that Mr. Fox has already testified that someone is already storing a personal classic car there. Mr. Fox agreed.

- 8) Existing barn on Parcel Lot #7 shall be used for personal use, and no exterior changes or modifications shall be made to the barn or the commercial garage designated on the Plan, Exhibit A-16, as existing shop without prior approval from the appropriate Township authorities.

Mr. Fox agreed.

- 9) Stone gravel located on Parcel No. 7 shall be removed, and the area shall be restored in natural state to provide a rear yard setback of seventy-five feet as required by the Zoning Ordinance if it has not been done already.

Mr. Fox agreed.

- 10) Hours of operation for the landscaping and design business shall not begin earlier than 7:00 a.m. during the weekdays and no earlier than 8:00 a.m. during the weekends, and operations shall cease no later than 6:00 p.m. Diesel vehicles shall not be permitted to park and idle for periods of time greater than ten (10) minutes.

Mr. Fox agreed.

- 11) Additional arborvitae or other similar plantings shall be plantings shall be planted along the rear of both properties to provide necessary buffer between the properties and adjacent Residential areas. Applicant shall replace any dead or dying arborvitae as soon as the weather reasonably permits.

Mr. Fox agreed.

- 12) The existing stream running through the properties shall not be altered, modified, or in any other way changed to change or prevent the stream's natural course.

Mr. Fox agreed.

- 13) The twenty-five foot container on the property shall be removed.

Mr. Fox agreed.

Mr. DosSantos moved and Mr. Gruen seconded to grant the Application as Amended and filed by the Applicant subject to the thirteen Conditions as recited on the Record.

Mr. Gruen asked if they are voting on both Variances at once since he would like to separate the one for the house from the one for the other property. Mr. Gruen stated Mr. Fox has indicated he would like to start construction on the house; and if some of the neighbors want to challenge the Board's Decision, he feels they would most likely challenge the Decision of the Shop and not the building of the house. Ms. Kirk stated someone could file an Appeal to the Board's Decision; and even if they are arguing just one portion of the Board's Decision, Mr. Fox would be wise not to proceed with anything. Mr. Gruen stated he felt they could do two separate Variances for the two separate Parcels, and one would not be tied to the other. Mr. Bamburak stated he does not feel it would be wise to move ahead on one while the other was being fought. Mr. DosSantos stated it is also just one Application, and Ms. Kirk agreed. Mr. Koopman added some of the Conditions apply to both properties so they do overlap.

Motion carried unanimously.

A gentleman in the audiences stated the Decision granted approval for him to work on Sundays and holidays, and he did not feel they were to have operations on Sunday and Holidays. Mr. Gruen stated he would have to follow the standard Township Ordinance regarding working during these times.

Mr. Bamburak asked Mr. Ware if he knew if construction is permitted by Ordinance on Sundays; and Mr. Ware stated he does not know, but if it is prohibited, he would not be able to work on Sundays. Mr. Bamburak stated the Decision made by the Zoning Hearing Board does not override other Township Ordinances such as limiting construction or the noise Ordinance, and these would still apply.

Mr. Bamburak asked Ms. Kirk to discuss the Appeal process. Ms. Kirk stated the Parties entered their appearance and confirmed at the last Hearing that they still wanted to be Parties to the action. She stated they will all receive a copy of the Board's written Decision and since they were Parties to the action, they have the right to file an Appeal with Doylestown if they wish to do so. She stated based on her notes after confirming at the last Hearing Mr. Mannarino and Mr. Mier were both still Parties to the Application.

Mr. Bamburak advised Mr. Fox that since he is aware that some of the neighbors have concerns, even though he has the Approval, he still cannot make excessive noise at any given time. Mr. Fox stated anyone who has come to his property for the last two years knows what kind of person he is. Mr. Bamburak stated he feels Mr. Fox's Testimony has shown that he is willing to work with the Township and his agreeing to the thirteen Conditions some of which he feels are limiting to the business, shows that he is a gentleman. Mr. Bamburak advised the gentleman in the audience that if he feels there is an inordinate amount of noise, he could file a noise complaint.

Mr. Gruen stated a business has been in existence there for many years, and he feels it is a pre-existing non-conforming business. He stated Mr. Fox also purchased additional land so that he has five acres, and he could open a body shop if he chooses. Other Board members indicated that these are Mr. Gruen's comments alone.

Mr. Fox stated the neighbors are welcome to come speak to him at any time.

Mr. Koopman left the meeting at this time.

#### APPEAL #15-1726 – ANTHONY & SYLVAN POOLS

The Application submitted was marked as Exhibit A-1. A Zoning Permit Plan submitted was marked as Exhibit A-2. Notice of tonight's Hearing was published in the Bucks County Advance, and the Proof of Publication was marked as Exhibit B-1. The property was posted with Notice of tonight's Hearing, and a copy of that Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of the letter with the list of addressees was collectively marked as Exhibit B-3.

Mr. Scott Macelroy, property owner, and Mr. Robin McCubbins, were sworn in.

Ms. Kirk stated when she was reviewing the file it came to her attention that Mr. Macelroy had previously been a client of a former partner of hers, Tom Jennings; and that matter has been closed for some time, and Mr. Jennings is no longer with the firm. She stated she does not know what that case involved, but she wanted the Board to be aware of this.

Mr. Bamburak stated an 80' setback is required and they are requesting that it be reduced to 30'. Mr. McCubbins stated there is an arterial road setback of 80' from Newtown-Yardley Road, and they would like to reduce this to construct a swimming pool. He stated the 80' would not leave much room in the back yard to do much, and it brings it within 20' of the house.

Mr. Zamparelli asked if the 80' is from the center of the road or from the property line, and Mr. McCubbins stated it is from the edge of the right-of-way. Ms. Kirk asked if it was the edge of the right-of-way or the edge of the cartway, and she asked Mr. McCubbins if he went to the curb of the road when he measured it; and Mr. McCubbins stated they had a surveyor do the work, and he feels it is 80' from the edge of the right-of-way.

Mr. Bamburak asked Mr. Eisold where the 80' is measured from, and Mr. Eisold stated it should be the edge of the right-of-way line; and he believes that what is shown appears to be right.

After further review of the Plans it was agreed that they would go 80' beyond the center line of the road which would be 120' from the center of the road.

Ms. Kirk stated the Code requires that it be 80 feet from the right-of-way line and not from the center line. Mr. Bamburak stated what was presented was therefore correct.

Mr. Moffa stated they are seeking a 30' setback, and he asked where the 30' line is on the map since it appears that the pool comes to within 42'. Mr. McCubbins stated there is a shed. It was noted that while the proposed shed is shown, there is no dimension. Mr. Gruen asked why they could not put the shed somewhere else, and Mr. Macelroy stated he feels they do want to move it. Mr. Gruen asked if they could move it to the area where the temporary topsoil stockpile is shown provided they are 10' from the property line.

Mr. Bamburak stated he understands that the shed is for all the incidentals for the pool, and Mr. Macelroy agreed. Mr. Bamburak stated if they move the shed to the area where the temporary topsoil is, they would be at 42'.

Mr. Kirk stated if it would 42' of a setback, and the Board was inclined to approve this, a Motion would be to approve the Application to provide for a reduced setback from an arterial road not to be less than 40' which would give a 2' cushion.

There was no one present in the audience to discuss this matter.

Mr. Eisold stated they have shown a "level spreader" which is all around the pool, and typically a level spreader takes the water and spreads it out evenly when in effect what they are building is a two foot by two foot dry well around the whole perimeter of the pool; and if it built up to such an elevation it would spread out. Mr. Eisold stated he feels they should call it a dry well/level spreader and not just a level spreader since that does not connote a BMP per se.

Ms. Kirk asked if that would effect the Zoning Application or is that an Amendment to the Plan for the Building Permit since she does not feel that has any bearing on what the Board has to decide on; and Mr. Eisold stated they could put that on the Building Permit.

Testimony was closed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to grant the Variance of a reduction to 40' from the 80' required for the construction of the swimming pool.

APPEAL #15-1727 – KS GREENDAY, INC.

The Application submitted was marked as Exhibit A-1. A Site Plan provided was marked as Exhibit A-2. A Plan entitled "Zoning Permit Plan" was marked as Exhibit A-3. Notice of tonight's Hearing was published in the Bucks County Advance, and a copy of that publication was marked as Exhibit B-1. Notice of tonight's Hearing was posted at the property, and a copy of the Posting was marked as Exhibit B-2. Notices were mailed to property owners as required by the Ordinance, and a copy of that letter with the list of addressees was marked as Exhibit B-3.

Ms. Debbie Deeney and Mr. John Deeney were sworn in.

Ms. Kirk stated although this is also for an in-ground swimming pool with decking there is also a request for a construction of a 400 square foot patio which means that the Applicants not only need a reduction in the special arterial road setback, but they are also seeking an increase of impervious surface coverage from 18% to 24.28%.

Mr. Deeney stated they have lived there over thirty years and are looking to put in a pool for exercise. He stated there will still be a significant setback even with the pool there.

Mr. Bamburak stated the Board's concern is more with the impervious surface, and he asked if they have any plans to mitigate any of the increased impervious surface. He stated typically someone who designs a Plan like this realizes that impervious surface is something the Board does not to grant Variance for and there is the need for Best Management Practices for stormwater run off, and they propose to put in additional French drains, stone pits, etc. so that even though the apparent impervious surface ratio is greater, these additional items would give an effective impervious surface ratio which does not change; and there is none of that on the Plan.

Ms. Kirk stated based on the Site Plan that was provided it appears that there is an existing concrete decking on the property of approximately 430 square feet. Ms. Kirk stated she understands that they intend to expand this by adding a second portion of patio of 420 square feet. Mr. Deeney stated currently there is a concrete slab, and they will be taking that out. Ms. Kirk asked when they calculated the numbers for the project it shows a concrete patio of 341 square feet, but there is nothing shown that the existing concrete patio is going to be removed. Ms. Deeney stated they are repaving it. Mr. Gruen stated they are keeping it and are just re-newing it, and Ms. Deeney agreed. It will be a larger patio and they are adding additional impervious surface.

Mr. Bamburak noted the level spreader shown on the Plan, and he asked if this is something new in pool construction. Mr. Eisold stated it is basically a dry well, and there is a detail of it shown on the sheet. Mr. Eisold stated it is like a long, stone drywell trench. Mr. Bamburak stated people have used it before, and the benefit is it encapsulates the whole area. He feels what they have proposed is a good solution so that the whole down side of the pool is circulated by this stone dry well. Mr. DosSantos asked if the stone dry well provide an effective mitigation, and Mr. Eisold stated it does. Mr. Eisold stated the calculations show that it is two feet deep by two and a half feet wide and one hundred and eighteen feet long, but does not see where they took the calculation to get to the size of the stone pit that they need. He cannot determine exactly what the mitigating value of the stone pit is although he assumes they did that calculations. Mr. Moffa noted the Volume Control calculation on the Plan. Mr. Eisold stated this is what he was looking for, and he stated they have to provide for the 2" run off, and they show 590 cubic so they match what they need to have. Ms. Kirk asked Mr. Eisold based on what he sees on the Zoning Permit Plan what does he estimate would be the net effect of the impervious surface, if this was built as proposed; and Mr. Eisold stated they

are putting in enough stone and sizing it such that it will contain the whole 2" run off over the new decking for the pool so they are providing enough storage to reduce and hold that total amount of run off to get back to the original impervious surface which is basically taking it back to 18%.

Mr. Zamparelli stated Mr. Eisold is saying that the effective impervious surface will be 18%, and Mr. Eisold agreed. Mr. Eisold stated anything that runs off from the new impervious surface is going to this stone and able to be stored in the stone so that there is no net increase run off from the lot from the new impervious surface for the two year storm. Mr. Moffa asked if they are mitigating not just the new decking, but also the new patio; and Mr. Eisold stated it includes the decking, the equipment pad, the coping, and the patio. Mr. Zamparelli asked Mr. Eisold if he needs more time to review this, and Mr. Eisold stated he feels the calculation looks good. He stated there will also be a Building Permit to be reviewed, but they are reducing the effective impervious surface.

There was no one present in the audience to speak to this matter, and Testimony was closed.

Ms. Kirk suggested they approve the Application as requested with the condition that the items designated as spreader or dry well be constructed as shown on the Zoning Permit Plan. Mr. Bamburak stated the Motion should also be to allow the impervious area of 24.5% with an effective of 18.5% with the installation of the spreader bar as shown. Ms. DosSantos stated his concern is that while Mr. Eisold did a quick evaluation, there could be a problem with the numbers, and Mr. Gruen stated they would have to rectify this. He stated if they approve this, it would be subject to them maintaining the equivalent of 18.5%. Mr. Eisold stated as part of the Building Permit, they will review the actually stormwater calculations.

Mr. Moffa moved, Mr. DosSantos seconded to approve the Application as requested with the spreader bar constructed as shown for an overall net impervious effect of 18.5%.

#### OTHER BUSINESS

Mr. Bamburak noted the e-mails sent to the Board by Ms. Kirk on a number of subjects.

With regard to Aria, Ms. Kirk stated at one of the prior meetings she had circulated a memo she had received from Mr. Garton which indicated that there had been discussions between the Hospital, the Township, and the group known as RAFR

regarding the Denial of the Application for a proposed hospital/medical offices at the site. Ms. Kirk stated the proposed Stipulation would encompass the Township adopting a Health Village Ordinance which reflects various uses to be at the property but completely eliminates a hospital use. Ms. Kirk stated after the Board had looked at it and because the Township had indicated that the Supervisors approved some of the uses proposed, had questions about some of the uses proposed, and disagreed with some of the uses proposed the Zoning Hearing Board felt that there were some inconsistencies and ambiguities as to what would be the final version of the Ordinance. Ms. Kirk stated she relayed that back to Mr. Garton via an email indicating that the Zoning Hearing Board was not in a position at the time to say yes or no without more specific information.

Ms. Kirk stated at the time of the last Zoning Hearing Board meeting, several members of the Board were inclined to allow the Appeal to move forward, which apparently created an "uproar," because the Township's position is that since the Zoning Hearing Board is a Party to the action, the Township Supervisors are not going to approve the proposed Stipulation or Ordinance unless the Zoning Hearing Board is on board to approve it. Ms. Kirk's stated her recommendation to the Township is that the Zoning Hearing Board has no authority whatsoever to approve or deny a proposed Ordinance, so it is a "Catch-22" situation. Ms. Kirk stated she spoke to Mr. VanLuvanee today and relayed this to him.

Ms. Kirk stated she is now looking for direction from the Board. She asked, assuming the Health Village Ordinance is adopted by the Township Supervisors, as long as that proposed Ordinance totally eliminates any proposed hospital use and all other issues get resolved between the Township, RAFR, and the hospital would the Zoning Hearing Board be inclined to approve the Stipulation.

Mr. DosSantos stated his position has always been that if the Ordinance is changed, it would eliminate the matter before the Zoning Hearing Board, and Ms. Kirk agreed. Mr. Bamburak stated he does not feel the Zoning Hearing Board should be asked to make policy.

Mr. Gruen stated his concern is anytime the Zoning Hearing Board turns something down what would stop the Township from going back and taking the Veterinary Hospital and re-zone it. Mr. Bamburak stated that is a separate issue. Mr. Gruen stated his concern is that if the Zoning Hearing Board approved this, they are approving taking the matter out of the Zoning Hearing Board's hands by just changing the Zoning. Mr. Bamburak stated the Board of Supervisors can do this, and other Board members agreed. Mr. Bamburak stated by law the Board of Supervisors can change the Zoning, and Ms. Kirk agreed. Mr. Bamburak stated the Zoning Hearing Board is not here to fight the Supervisors.

Ms. Kirk stated she always understood that the conversations were going to be if there was a proposed new Ordinance adopted it would effectively resolve all the issues, and the Zoning Hearing Board would not have to be involved. She stated for some reason, all the other Parties seem to think that there should be, for clarity of the Record, a Stipulation signed by all the Parties and filed with the Court. Ms. Kirk stated the Stipulation basically indicates that if there is a new Ordinance adopted, there are no further Zoning issues to be dealt with by the Zoning Hearing Board.

Mr. DosSantos stated the problem comes that the Stipulation has been negotiated among three Parties; and while the Zoning Hearing Board may be a Party to it, they were not a part of the negotiation process. He stated they are looking at a finished proposal, and there are many open questions on it; and there has not been a full accounting of what is to take place. He stated if they want Approval from the Zoning Hearing Board, they have to provide the Board with a full and final version.

Mr. Zamparelli stated he feels that if the Supervisors want to change the Ordinance and provided they exclude a Hospital and Mr. VanLuvanee and RAFR are satisfied, there is no Zoning Variance required.

Mr. Bamburak stated they provided a list and were asking which of the fifteen uses were satisfactory to the Zoning Hearing Board. Mr. Bamburak stated his concern is that if the Zoning Hearing Board goes down the list and indicates certain uses are okay and certain are not, they may be questioned why they made those choices.

Mr. DosSantos stated it seems that Mr. Smolow indicated he would not have a problem having a meeting, and they could get the Parties involved at either at a regular meeting or a special session, and they could get an opinion from everyone.

Mr. Zamparelli asked if this is standard procedure, and Mr. DosSantos and Ms. Kirk stated it is not.

Mr. Benedetto stated there is a gross misunderstanding on the part of the Board of Supervisors. Mr. Benedetto stated he is adamantly opposed to any changes to any Ordinances, and he does not feel they should change any Ordinance for anybody. He stated if they want to come back and have a Health Care Village, they should go through the Zoning Hearing Board, and get Approval from them. Mr. Benedetto stated Mr. VanLuvanee is indicating in his comments that everyone is agreeing to it so the Zoning Hearing Board should be okay with it and walk away; and they will change the Ordinance and not have to deal with the Zoning Hearing Board. Mr. Benedetto stated he indicated that he does not feel that this is the way they do things in Lower Makefield. Mr. Benedetto stated when he raised this issue, Mr. Garton discussed it with the Board of Supervisors in Executive Session; and he feels it should have been in the open.

Ms. Kirk stated both Mr. VanLuvanee and Mr. Smolow via the letter and in her prior conversations indicated they would be more than happy to meet with the Zoning Hearing Board in Executive Session; but she stated there would not be an Executive Session, and any discussion would be an Agenda item in front of the Zoning Hearing Board. Mr. Benedetto stated he feels this is a great idea. He stated Mr. Garton told the Board of Supervisors when they were discussing the different uses, that the Supervisors would have to approve it and the Zoning Hearing Board would have to approve it. Mr. Benedetto stated Mr. Garton made that statement as if all Parties do not agree to it, it will not happen.

Ms. Kirk stated this would relate to a Stipulation to be filed with the Court to settle the pending Land Use Appeal; however, if there is an Ordinance that is adopted that takes care of those issues, the Zoning Hearing Board no longer has jurisdiction over the matter.

Mr. DosSantos stated he feels the issue is that if the Zoning Hearing Board is a Party to a matter before the Court, in order for the Court to Approve a Stipulation all Parties have to sign off on it.

Mr. Benedetto stated he agrees with Ms. Kirk that the Supervisors can bypass all of this and adopt an Ordinance permitting the Health Care Village, and it will bypass the Zoning Hearing Board. Mr. Benedetto stated the Supervisors did not want to do this to the Zoning Hearing Board, yet there is this disconnect. Mr. Benedetto stated he does not feel the disconnect is from the Zoning Hearing Board, rather he feels that the Zoning Hearing Board "gets it."

Ms. Kirk stated on April 9 she sent Mr. Garton a memo based on his letter of March 11 that listed the uses and indicated that the Board of Supervisors had no difficulty with some of the uses, opposition to some, and a third group for which they needed more information. Ms. Kirk stated her e-mail to Mr. Garton stated that "the Zoning Hearing Board briefly discussed the proposed Stipulation and Ordinance and at this time until the specific proposed uses and other language has been confirmed, the Board has no comments about the proposed documents nor is the Board in any position to indicate any willingness to Approve the Stipulation." She added in the e-mail that "some of the Board members were vocal that they were not inclined to Approve the Stipulation at all and other members stated that at this time it should be handled by the Court."

Mr. DosSantos stated he feels there are two separate issues in the sense that if they want a Stipulation to be presented to the Court, then the Zoning Hearing Board will have to be a Party to the Stipulation; however, if the other Parties want to agree amongst themselves to withdraw the Appeal because the Board of Supervisors

is going to approve an Ordinance change, then the Zoning Hearing Board is not a Party to it. Mr. DosSantos stated in order for it to go to the Court with a document to be signed by the Judge, the Zoning Hearing Board will have to be a signee on any Stipulation; and Mr. Zamparelli and Mr. Bamburak stated they would be okay with this.

Mr. Benedetto stated his understanding is that if the Board of Supervisors wants to adopt an Ordinance, they would have to advertise it and do all the things that are necessary to adopt it such as contact the Bucks County Planning Commission which seems to not be taking place in this particular instance; he stated it seems as if they are trying to go with the Stipulation so that everyone agrees to these uses.

Ms. Kirk stated when an Ordinance was proposed to the Zoning Hearing Board no one has every told her that as part of the process, passage of the Ordinance would bypass all of the other requirements. She stated she was under the impression that these discussion for the new proposed Ordinance would go through the normal channels such as advertising, submission to the Planning Commission, etc.

Mr. DosSantos asked if this is a requirement, and Ms. Kirk stated it is. Mr. DosSantos stated then they will have to do it that way since the MPC provides that they have to do this.

Mr. Benedetto stated his understanding is that if the Zoning Hearing Board will not sign off on the Stipulation, the Board of Supervisors could still go through with the process Ms. Kirk is talking about and in a sense it would by-pass the Zoning Hearing Board, and the Supervisors would adopt an amended Ordinance that would allow for a Health Care Village; and Ms. Kirk agreed. She added that at that point the Appeal is moot.

Mr. Gruen asked why they will not come before the Zoning Hearing Board, and tell them what they want to do; and the Zoning Hearing Board would vote on each item. Mr. Gruen stated 75% of what they are asking for is allowed by law under the Zoning. He stated he would object to a CVS there as part of a Village, but if they wanted a pharmacy within a doctor's village for medications, this would be something else. He stated he would not want them to turn this into a Commercial Zone instead, and there could be hotels. He stated they do not know what they are building, and there are too many unknowns.

Mr. Benedetto stated he understands how the Supervisors can change the permitted use to allow for a Health Care Village, and asked where the Zoning Hearing Board would have to come in to approve something that would allow this to take place. He stated it would still have to go through the same process. Ms. Kirk stated the Stipulation states “that the Township will undertake the process under Township Ordinances and the Municipalities Planning Code to adopt an Ordinance in the form attached hereto as Exhibit A.” Mr. DosSantos stated they have to go through the process, and Ms. Kirk agreed. Mr. Benedetto stated technically the Board of Supervisors does not need the Zoning Hearing Board’s approval or not, and they can either bypass the Zoning Hearing Board or gain their “stamp of approval.”

Ms. Kirk stated the issue is not so much how they are going to do the Health Care Village Ordinance, but the issue specifically for RAFR’s purposes is they want it in writing under the Stipulation because part of the terms indicated that certain expenses were going to be reimbursed to them by Aria. Ms. Kirk stated if the Ordinance is merely adopted which bypasses the Zoning Hearing Board, RAFR does not have anything to hang its teeth on.

Mr. Benedetto stated the Supervisors can adopt an Ordinance and bypass the Zoning Hearing Board, and some of those things contained in the Stipulation do not have anything to do with the permitted use including not only RAFR’s reimbursement but also the Township’s reimbursement of their legal fees which is immaterial to what the Zoning Hearing Board is looking at.

Ms. Kirk stated the only thing that would have any direct effect on the Zoning Hearing Board would be the fact that Aria would be permitted to build without a Variance from the manmade steep slope, and that is the only outstanding Variance that would be at issue.

Mr. Benedetto stated this is where he gets back to Mr. Garton’s comments to the Board of Supervisors that the only way this Stipulation will take place is if all parties agree, and Mr. Benedetto stated he believes that is a misunderstanding from the Township’s and Board of Supervisors’ perspective because they have been led to believe that all Parties have to agree to it. Ms. Kirk stated this is correct if it is going to be submitted by way of a written Stipulation to the Court.

Mr. Gruen stated he also felt there were other items they would get relief; and Ms. Kirk stated while there are, they fall under the Subdivision and Land Development Ordinance and that has no effect on what the Zoning Hearing Board does. Ms. Kirk stated there are issues about open space, recreational space, traffic impact; and all of these fall under SALDO and have nothing to do with the Zoning

Ordinance. She stated the only direct impact would be the one requirement that says, "areas of the manmade steep slopes shall be exempt from resolution." She stated open space is not part of the Zoning Ordinance. Mr. Gruen asked if they do not give enough open space do they not come to the Zoning Hearing Board for relief, and Ms. Kirk stated they do not and open space was always a requirement under Subdivision and Land Development and not as part of the Zoning regulations.

Ms. Kirk stated she is looking for direction from the Zoning Hearing Board. She stated based on the last discussion, she relayed that the Zoning Hearing Board was not inclined to adopt everything as submitted because there were too many things that were not clear. Mr. Gruen stated he still stands by that. Ms. Kirk asked if she should tell them to come and be prepared to make a presentation to the Board and invite everyone. Mr. Bamburak asked if they could not go down the list and indicate what they were or were not in favor of. Ms. Kirk stated she feels that would establish a policy that is not appropriate. Mr. Gruen stated he feels they should tell them if they want to go on their own, and change the Zoning, they have the right to do it; but if they want the Zoning Hearing Board's "blessing," it cannot have the Zoning change, and they have to ask for Variances or relief from certain items. Mr. Zamparelli stated he agrees with Ms. Kirk and feels setting this precedent is wrong..

Mr. Moffa stated he feels they need to ascertain whether this is going the way of an Ordinance or a Court Settlement. He stated if it is an Ordinance, the Zoning Hearing Board has nothing to say about an Ordinance; and would only have something to say about the Court Settlement if any part of the Court Settlement has anything to do with Zoning. Ms. Kirk stated the only one would be the provision which relates to alter, grade, or clear the manmade steep slopes. Mr. Moffa suggested that they make this as their statement, and Ms. Kirk stated that would be fine. Mr. Moffa stated they should indicate that it appears that the only thing the Zoning Hearing Board needs to comment on is that one provision.

Ms. Kirk asked Mr. Eisold and Mr. Ware if there are any open space requirements under the Zoning Ordinance, and Mr. Ware stated he feels it is all in SALDO. Ms. Kirk stated she will go back and tell them that the paragraph they have included under Zoning requirements dealing with open space should not be there, and the only one Zoning issue deals with manmade steep slopes.

Mr. Moffa stated the Zoning Hearing Board is not an advisory Board, it makes rulings.

Ms. Kirk stated a comment was made that the Zoning Hearing Board had made prior comments that things were done by the Township without including them, and this why this is coming up. Some members stated they did not feel the Zoning Hearing Board stated this. Mr. Gruen stated he feels there was a comment when they "made a private deal with the Edgewood Café." He stated that was a "deal," and it is different here; and if they want to change the Zoning, they are not going to have the Zoning Hearing Board's blessing for is, as they cannot give them their blessing to change the Zoning and it is the Board of Supervisors' prerogative. Ms. Kirk stated with regard to the Edgewood Café, there was an Appeal; however, Ms. Kirk stated she did not enter an appearance on behalf of the Zoning Hearing Board so they were entitled to move forward and work out a Stipulation that the Courts could approve. She stated in this instance, the Zoning Hearing Board is an active participant because of the nature of the proceeding so no Stipulation can be filed with the Court unless the Zoning Hearing Board approves.

Ms. Kirk stated she will advise the Township that the Zoning Hearing Board has no comments to the proposed Ordinance but will accept the Stipulation as to the specific under Zoning. Mr. DosSantos stated the other attorneys can fashion a Stipulation that will indicate that the Zoning Hearing Board is signing off on this strictly as to the Zoning provisions. Mr. Bamburak stated then if there is a hotel that becomes unpopular, this would not be a Zoning provision, so this would not have anything to do with the Zoning Hearing Board. All Zoning Hearing Board members were in favor of proceeding with this matter in that way.

Ms. Kirk stated in her response she will indicate that the Zoning Hearing Board has no comments with respect to the proposed ordinance but will approve the Stipulation as it relates to the Zoning provisions i.e. steep slopes or any other Zoning provisions.

Mr. DosSantos asked Mr. Benedetto if he understands the position of the Zoning Hearing Board. Mr. Moffa stated Mr. Benedetto seems to have a larger issue which is that he feels it is inappropriate for the Board of Supervisors to craft an Ordinance, and Mr. Gruen stated that is their decision. Mr. Benedetto stated the Supervisors are a body of five; and if the other four agree to change the Ordinance, that is the way it goes, and he can live with that. He stated they will then by-pass the Zoning Hearing Board, and everyone will know what happened. Ms. Kirk stated that is within the Supervisors' power. She stated the Zoning Hearing Board is to interpret the Zoning and make decisions as it arises under the Zoning Ordinance and not to create the Zoning.

With regard to Sunflower Farms, Ms. Kirk stated she provided an e-mail to the Zoning Hearing Board and Mr. Ware about this matter. Mr. Ware stated he does not have one; but it may be in his e-mail since he was not at the Township today.

Mr. DosSantos stated Mr. Ware needs to get his e-mails lined up so he is getting information before the meetings. He stated this came up at a prior meeting that Mr. Ware was not getting information. Mr. Ware stated he asked those in the Township to let him know when something comes up; however, Mr. DosSantos stated this is not good enough since he needs these before the meeting. Mr. Gruen stated possibly he should be working at the Township on Tuesdays. Mr. DosSantos stated it is not serving them if he is not aware of these items.

Ms. Kirk stated with regard to Sunflower Farms, Mr. Garton had informed her that he did not think the Applicant was going to move forward with the Land Use Appeal, that the issue was going to die, that the Agreement of Sale was expiring, and that no one was moving forward. Ms. Kirk stated she contacted Mr. Murphy asking that if he files a Motion to Withdraw the Applicant's Appeal with Doylestown that she be provided a copy for her file. Ms. Kirk stated she received a response indicating that they would be filing for a Rule 27 Conference in the next few weeks, and late last week she did get a copy of Mr. Murphy's Motion that he filed with the Court.

Ms. Kirk stated a Rule 27 Conference is basically a Conference with the assigned Judge at which time the Judge will set a Briefing Schedule, and the Applicant will have thirty to sixty days from the Conference to submit their Briefs; and the Township and the Zoning Hearing Board will then have another thirty or forty-five days to submit their Briefs. Ms. Kirk stated the Testimony was exhausted so she does not anticipate anyone will indicate it should be Remanded back and there should be another Hearing, and she feels the Judge will just make a ruling on the Briefs.

Mr. Benedetto stated at the Board of Supervisors' last meeting, Mr. Garton had indicated it had lapsed and the Sale Agreement had expired. Mr. Gruen asked if the Sales Agreement has lapsed. Mr. Benedetto stated to Ms. Kirk's credit she reached out to Mr. Murphy and he indicated now they are going to file the Rule 27 Conference. Mr. Benedetto stated they could have just let this continue; however, Ms. Kirk stated someone would have come forward since the State has been pushing the County Courts not to allow things to sit for two years without any activity so it would have come up. Ms. Kirk stated she assumes that the Applicant decided that she decided she wanted to move forward. Ms. Kirk stated she does not know anything about the Agreement of Sale.

Mr. Gruen stated he feels the question is for Mr. Benedetto to the other Supervisors and the Township attorney whether the Sales Agreement lapsed or is still in force. Mr. DosSantos stated he feels this would be part of the Briefs. Ms. Kirk stated possibly if the Sales Agreement has lapsed, if the Applicant moves forward with the Rule 27 Conference, they might say to come back and file a Mandamus Action or something to force the Township to uphold the Agreement of Sale because of the fact that the Zoning was under Appeal, but she is not sure.

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Ms. Kirk stated this is the property on Roelofs Road. She stated at the last Board's Hearing in April, she was out of town at a Conference; and her partner, Mr. Truelove participated. Ms. Kirk stated shortly before that Hearing, Mr. Murphy sent a letter asking for a Continuance as his client was still working with the engineer on the stormwater management issues as well as talking to the neighbors. Ms. Kirk stated the Board approved that request and Continued it until June 2.

Ms. Kirk stated Mr. Murphy subsequently sent notice that he has to attend to another matter that evening, and would like to have the June 2 date pushed back until June 16. Ms. Kirk stated Mr. Ware should make sure that this is posted on the Website, and Ms. Ware stated he and Ms. Todd worked on this the other day, and they did update the Future Agenda.

Ms. Kirk stated they are still working out a specific stormwater management plan, and she felt the Board would be inclined to grant the Continuance to insure that they have a complete set of Plans to present, and Mr. Bamburak agreed.

Mr. Gruen moved, Mr. Zamparelli seconded and it was unanimously carried to Continue the matter to June 16, 2015.

Mr. Bamburak asked the neighbors be notified.

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

Respectfully Submitted,

Anthony Zamparelli, Secretary

