

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – MARCH 15, 2017

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on March 15, 2017. Ms. Tyler called the meeting to order at 7:40 p.m. and called the Roll.

Those present:

Board of Supervisors: Kristin Tyler, Chair
 John B. Lewis, Secretary
 Judi Reiss, Treasurer
 Jeff Benedetto, Supervisor

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

Absent: David Fritchey, Board of Supervisors Vice Chair

PRESENTATION OF PLAQUE BY BUCKS COUNTY RECORDER OF DEEDS

Mr. Joseph Szafran, the Bucks County Recorder of Deeds, was present and stated they have a special program called the Bucks County Tour of Honor; and their mission is to take Veterans to Washington D.C. for a day of honor for their service. He stated they seek the assistance of Police Departments throughout Bucks County, and he is here to make a presentation to Chief Coluzzi and the Police Department for their assistance in shutting down the roads that they take on their departure and return from Washington D.C. The plaque was presented to Chief Coluzzi. Chief Coluzzi stated it is an honor for their officers to participate in this, and they hope to do it every year.

Mr. Szafran stated this year they are doing two trips, and they will take Vietnam Veterans to Washington D.C. on June 5; and they will again seek the assistance of the Lower Makefield Police Department. He stated Vietnam Veterans are considered anyone who served from 1961 through 1975, and any Vietnam Veteran in Lower Makefield is invited to go; and they should contact the Recorder of Deeds Office. He stated the World War II and Korean Tour is on October 2.

Ms. Tyler stated this is a wonderful way to honor the Veterans and show them the proper respect, and she is proud that the Police Department has a part in helping with this process.

Mr. Szafran stated someone in the audience asked him if they accept donations, and he stated they do accept donations for this program since there are no tax dollars involved. He stated donations can be sent to Bucks County Tour of Honor at P.O. Box 689, Doylestown, PA or go to the Website wwwBucksCountyTourofHonor. Mr. Szafran agreed to provide this information to Mr. Fedorchak so that it can be put on the Township Website.

PUBLIC COMMENT

Mr. Peter Solor, 28 Edgewood Road, stated he is the Co-Chair of the Environmental Advisory Council. He thanked the Public Works Department for their work with snow removal.

Mr. Solor stated he would like to speak about the Community Center and sustainable design construction. He stated in 2009 Lower Makefield Township adopted a Green Building Ordinance to have new or major renovations for Township buildings be constructed with sustainability and good design practices in mind. He stated they set a standard where Township building projects were required to be LEED Certified at a Silver rating or to be designed and built equivalent to a LEED Silver rating but without performing the Certification process. He reviewed the LEED requirements and benefits of LEED construction.

Mr. Solor stated the Community Center is the first Township project for which this Ordinance would have applied. He stated on May 22, 2015 Plans and Specifications were issued that would have provided for the Community Center to be constructed compliant with a LEED Certified level and possibly with minor additional Township action as per the requirements of the Ordinance to be compliant with the LEED Silver level. Mr. Solor stated the 2015 Plans and Specifications are what are currently posted on the Lower Makefield Township Website. Mr. Solor stated when the project was put out for re-bid in 2016 with new Plans and Specifications a significant portion of the sustainable elements were deleted, and he particularly noted the Specification Section entitled, "Sustainable Design Requirements" which was removed. He stated an analysis of the new documents suggests that the project will not be compliant with the LEED Certified level much less LEED Silver. He requested that the deletions and modifications to the documents be investigated, and that consideration be given for insertion back into the documents of the Specifications Section that was deleted so that the building is more in compliance with the Township Ordinance. Mr. Solor stated the Township Website should also be updated to reflect the current 2016 design for the Community Center rather than potentially misleading 2015 documents.

Ms. Tyler asked that Mr. Fedorchak look into this issue.

Mr. Benedetto stated on March 4, 2015 the Board discussed what they were going to do whether it would be a LEED Silver Certification or equivalency. He stated the decision seemed to be made that even though they were not going to seek the LEED Silver, they were going to try to get up to 40 points or 50 points. He stated it seems that this “fell through the cracks.” He stated it does not seem that they are going to be where they want to be according to the Green Ordinance. Mr. Benedetto stated he feels from his conversation with Mr. Solor that he wanted them to try to do the best thing possible before the building gets built; and that while they are not going to go for LEED Silver Certification, they will go for as energy-efficient of a building as possible. Mr. Solor stated there are many things that could still be done at this point that would be at little to no cost that would bring points back in. Mr. Benedetto stated he understands Mr. Solor has expertise in LEED, and Mr. Solor stated he is a LEED-accredited professional. Mr. Benedetto stated he feels they should have Mr. Solor as the green advisor as he believes currently the Township Manager is the green advisor; however, Mr. Fedorchak stated he did not believe so. Mr. Benedetto stated he felt the conversation two years ago was that Mr. Fedorchak would be the green advisor; and if it is not, he feels there should be someone who is doing this.

Mr. Benedetto moved that Mr. Solor be the green advisor.

Mr. Benedetto stated he feels they should get Clarke, Caton, and Hintz to meet with Mr. Solor and the EAC and indicate that they are not going to go through the process that could cost \$125,000 to \$200,000. Mr. Solor stated for the actual process of Certification the cost would be \$10,00 to \$15,000. Mr. Benedetto stated if they can do certain things to get closer to the equivalency without going to the Certification or just making it more energy efficient, he feels it makes sense to do that.

There was no second to the Motion.

Ms. Tyler stated she does not know what a green advisor is, what their roll would be, and if Mr. Solor would be doing this at no expense. Mr. Solor stated the Ordinance indicates it is the green administrator not green advisor. Ms. Tyler asked Mr. Fedorchak and Mr. Truelove to look into what the obligations of the Ordinance would be. Mr. Fedorchak stated he believes they have hired a Commissioning Agent, and Mr. Solor stated that is helpful information as that was not clear in any of the documents. Mr. Solor added that a Commissioning Agent is a very important part of the process. Mr. Fedorchak stated they have a Commissioning Agent on board who is tasked to do the very things Mr. Solor has addressed this evening and has been working with George Hibbs, the Architect/Project Manager. Mr. Fedorchak stated he expects to get a report from Mr. Hibbs in the near future, and he will contact him tomorrow to find out what progress he has made. Mr. Fedorchak stated they will meet the Certification level, and the mission was to get as close to the Silver as

possible. Mr. Solor stated that would be more than what a Commissioning Agent typically would do as a Commissioning Agent would just look at one aspect of it although the Contract may be written more broadly than that.

Mr. Solor stated the other aspect is that there was a portion of the design that was dropped between the 2015 Bid and the 2016 Bid issuance. Mr. Fedorchak stated there was a period of time when the mission of the Board in place at that time was that the architect should save costs wherever possible, and that took a front seat in the process for some time. Mr. Solor stated he would like to meet with them because he feels there are things that can be added back, and Mr. Fedorchak stated he feels they can accomplish that.

Mr. Lewis stated he is concerned about a breakdown in the process. He stated when the Board voted to go out to re-bid, they specifically stated that they wanted to reuse the 2015 Bid partly because they wanted Bidders to save time and potentially give an “apples-to-apples lower price” than they did in the 2015 Bid. He stated he was troubled when the LEED equivalency language was removed, and he did not know that had been the case; and he feels this is a process breakdown particularly when the architect came before them and said that the building would meet equivalency just last August. Ms. Tyler stated she does not agree that there was a process breakdown, and she added that Mr. Fedorchak just indicated that they will still meet the Certification level.

Mr. Solor stated he has gone through the documents, and he does not feel they will get to Certified with the documents that are currently out there. He stated there are a few things that could be added back in that are not in the documents that would help to get to the Certified level. Mr. Benedetto stated the Certified level is up to 40 points, and Mr. Solor agreed.

Ms. Tyler asked that they not speculate and instead get a direct report from the engineer. Mr. Lewis stated he feels they need to determine where the process breakdown occurred; however, Ms. Tyler stated she does not agree with the characterization that there was a process breakdown, and she feels they should first find out what happened so they know what they are discussing. Mr. Lewis stated he wants to make sure that the next time they go through this, they do not have a similar situation where they think something is going out to Bid under what the Board stated in the Minutes that they wanted to re-bid exactly as was previously done, and then things changed without knowledge of the Board. Ms. Tyler stated she does not know that was the case, and they need to look at the Minutes and hear what the architect has to say. Mr. Lewis noted the May 4, 2016 Minutes when the Board elected to re-bid the original specifications for the Community Center as

outlined in the 2015 Bid and include Bid Alternates to increase the size of the Community Center. He stated that was the Resolution, and they specifically stated they were re-bidding what they did in 2015. He stated the assumption would be that they would take exactly the specs they had in 2015. Ms. Tyler disagreed and noted the divider door was pulled out as well as a number of other changes made between 2015 and the re-bid. Mr. Lewis stated the Motion was to have Bid Alternates for increased square footage and some of the other items that were discussed. He stated in August when the Bids came back, the Board was told that the building would meet equivalency, and he assumed everything was okay. Mr. Lewis stated later they found out things were not okay. He stated he feels this was a change of scope that they did not vote on, and he feels this is a process issue where they lost what was expected. He stated there were no-cost elements that were included in the Bid in 2015 such as differences in paint type that would have no difference in cost. He stated this is what they need to make sure they are aggressive on when they monitor Capital projects within the Township. He stated he feels they need to look at the process breakdown, and he would like to know why and what happened so that this does not happen again.

Mr. Benedetto stated on March 4, 2015 the Board decided to put it out to Bid. He stated Mr. Solor has indicated that what was in the Bid documents from 2015 to 2016 changed, and this is what Mr. Lewis is commenting on where there was a breakdown in the process; and he agrees they have to get to the bottom of this as this is not something that any of the Supervisors knew of. Mr. Benedetto stated Page 12 of the March 4, 2015 Meeting Minutes includes a discussion by Ms. Lisa Grayson-Zygmunt, who indicated she was a LEED expert, and they indicated they would get as close to Silver as possible. Mr. Benedetto stated the wishes of the Board at that time were that while they were not going to go for the Silver Certification as it would increase costs, they wanted to get an energy-efficient building as close to Silver as possible. He stated there was to be a conversation about this with the EAC members, but that conversation did not take place. He stated he feels these conversations have to take place, and he would like to see Mr. Solor be involved as the green advisor or just have people meet together.

Ms. Reiss stated there is an Ordinance which states pretty clearly what the expectation is. She asked Mr. Truelove what should have happened if they are not following the Ordinance. Mr. Truelove stated normally if an Ordinance is part of a required process and the Board decides to deviate from that, they need to take an affirmative vote to Waive the requirement of the Ordinance.

Ms. Tyler asked Mr. Fedorchak to get a report from Mr. Hibbs, and she asked Mr. Benedetto to continue his communication with Mr. Solor.

Mr. Solor stated he would like to meet with Mr. Hibbs since he feels he could get answers to some technical questions. Mr. Lewis asked if this could be put back on the Agenda after Mr. Solor meets with the architect, and Ms. Tyler asked that they first have Mr. Solor coordinate with Mr. Fedorchak after they get the report from Mr. Hibbs. Mr. Lewis stated he feels they need to determine what the breakdown was and how far they are from LEED Silver equivalency, and at that time they could possibly appoint a Green Building Administrator as well as have a Resolution that they are Waiving the requirement from the Ordinance that the prior Board passed. He stated they have a few options – one of them is to repeal or revise the Ordinance or make an edit to it that it only applies to buildings built after 2018 or Waive it as he feels they have to be respectful of the Ordinance that was passed previously and explain to people what has been done.

Ms. Joanne Guiniven, Chair of the Airport Task Force, was present with the rest of the Task Force members, Peter Kakoyiannis, Rob White, Rich Preston, Brendan Monaghan, and Joseph Menard. Ms. Guiniven stated they want to bring the Board up to date with what they have done over the last five weeks. She stated they decided they needed to follow two different paths simultaneously because of the time sensitivity moving forward. She stated one is to pursue direct talks with Mercer County Executives, the FAA, and other Governmental officials; and the second is to review any possible paths of legal recourse following up on some of the things that BRRAM has been doing.

Ms. Guiniven stated they met with Brian Fitzpatrick who indicated his willingness to help and gave thoughtful counsel on how they might proceed. She stated they also had an informative meeting with a Mercer County Freeholder who provided background information from their point of view as they want the Airport to expand. Ms. Guiniven stated the Task Force is also reviewing the Urban Engineers Plans that were presented a few months ago; and they are monitoring the Website for when they might have the next presentation since they gave no notice last time, and they do not know that they will provide notice again. Ms. Guiniven stated BRRAM was helpful in giving them some of the documentation that they had, and they are reviewing that and getting ready to formulate a request for additional documents. Ms. Guiniven stated last week they formally asked Brian Hughes for a meeting on the Airport Expansion Plans, but they have not received a response yet. She stated if there is no response after several tries, Representative Fitzpatrick believes he can put some pressure for them to at least meet with the Task Force.

Mr. Kakoyiannis stated part of their charge is to gather facts, present the choices to the Board of Supervisors, deliberate, decide, and move forward. He stated they need the Board of Supervisors to hold a meeting as soon as possible with Mr. Potter and Mr. Truelove. Ms. Tyler asked if Mr. Potter has responded to the Township with a

rescheduled date, and Mr. Truelove stated Mr. Potter has not. Ms. Tyler stated they were going to meet with him, and Mr. Kakoyiannis agreed he knew about that. Mr. Kakoyiannis stated there is a window of time, and they do not want this to become a fait accompli by the time they can have a meeting. He stated Mr. Fitzpatrick had suggested that they reach out to the Mercer County people and deal with the FAA; and if they say no, he could then approach it down in Washington, and they would go there with Mr. Fitzpatrick and anyone from the Board or those in the community who wish to go and push this forward.

Mr. Kakoyiannis asked Mr. Truelove if his firm represents Mercer County, and Mr. Truelove stated the only entity they represented was the Mercer County Community College. He stated a former partner of his represented Ewing Township; however, that individual is no longer with his firm. Mr. Kakoyiannis asked Mr. Truelove if he could arrange for a meeting with Mr. Hughes, and Mr. Truelove stated he will look into this.

Mr. Kakoyiannis stated he reached out to Mr. Potter six to eight weeks ago, and he shared with Mr. Kakoyiannis where he was going; and he alluded to a March 15 deadline for a Brief, and Mr. Kakoyiannis stated he was surprised about this as he was not aware of any Brief being needed. Mr. Kakoyiannis stated he suggested to Mr. Potter if he could reach out to the Department of Justice Attorney and ask if they could push it off for some time. Mr. Truelove stated while Ms. Bussey who is present from BRRAM may have some direct information from Mr. Potter, his understanding is that they were involved in negotiations and discussions which were to be held in a confidential manner.

Mr. Kakoyiannis stated he did have a discussion with the attorney in Washington, Joan Phippen, as a member of the community and a BRRAM contributor. He stated her answer was that she could not speak to him because of the Confidentiality Agreement. Mr. Kakoyiannis asked her if there was a reason why she could not share the information if BRRAM had their Counsel authorize her to share the Confidentiality Agreement, and she indicated she would reach out to Mr. Potter. Mr. Kakoyiannis asked that the Township support this initiative and that BRRAM allow their Counsel to give the information in the form of the Confidentiality Agreement so that Mr. Truelove can review it and decide what the next step is.

Mr. Kakoyiannis stated they need to have a meeting with Mr. Potter and the Township as soon as possible as the window is closing. He also asked BRRAM to step forward so they can work together, and not have the question of whether the funds are or are not being paid be a stumbling block in a negotiation.

Mr. Benedetto stated there is a window, and the window is closing. He stated there is a conversation taking place between BRRAM and their attorney, Mr. Potter, and the Department of Justice; and the Township is not a part of that discussion because there is a Confidentiality Agreement, and he feels this is unacceptable. He stated the Township is being shut out of a process that they could benefit from and be heard from. He stated the time to make a decision is now. He stated they could have Mr. Truelove enter an appearance or they could have someone who already has knowledge in the case and is engaging in Settlement negotiations. Mr. Benedetto stated he does not feel it is a good idea to put Mr. Truelove in place because he has no background in airport litigation, and Mr. Potter has an expertise.

Ms. Guiniven stated they have a hard time going to Mr. Potter and BRRAM without being able to say that they will help fund going forward recognizing the funding going backwards is a separate discussion.

Ms. Tyler asked Mr. Truelove where a Confidentiality Agreement is borne from in this situation, and Mr. Truelove stated he does not know which side originated it. He stated he talked to the DOJ Attorney General from Washington, and she indicated that they would be entering into a Confidentiality discussion; and there was very little that she could tell him although she was as forthcoming as she could be. Mr. Truelove stated he did not ask her who originated the Confidentiality Agreement. Ms. Tyler asked how the Federal Government protects itself from disclosure of information through a Confidentiality Agreement in a matter of public concern. Mr. Truelove stated it would be analogous to the Right-To-Know process. Mr. Truelove stated he agrees a formal Confidentiality Agreement is unusual.

Mr. Kakoyiannis stated he would speculate that Allegiant was the initiating Party to have the Confidentiality Agreement since before they have some real understanding as to where they are going, they would not want to have this going out to public domain. Mr. Kakoyiannis stated the Task Force needs to be able to get in so they can effectively report to the Board of Supervisors what is taking place and let the Board come to a decision.

Ms. Tyler asked Mr. Truelove how he left the conversation with the Department of Justice attorney, and Mr. Truelove stated at that time he thought he was going to be speaking to Mr. Potter and indicated that the Township may want to become a Party at some level. He stated the attorney did not indicate an objection to that; but the challenge is procedurally there is a timeline for intervention which would have been sometime in January, although that does not mean it could not be done after the fact with permission by the other Parties to do it.

Ms. Tyler stated when they were trying to get Mr. Potter to come in and speak to the Township, they asked him to re-schedule the meeting because he could not commit to the scheduled night, and she asked Mr. Truelove if he has heard back from Mr. Potter; and Mr. Truelove stated he has not.

Ms. Holly Bussey, 20 Knoll Drive, President of Bucks Residents for Responsible Airport Management, BRRAM, was present. Ms. Tyler asked why Mr. Potter has not called the Township back. Ms. Bussey stated she does not feel this is a clear question in that her communication with Mr. Potter was that there was a scheduled meeting that was canceled at the last minute, and Mr. Truelove had asked that they provide dates. Ms. Tyler stated Mr. Potter indicated that he could not commit Wednesday night meeting until possibly Wednesday morning, and they asked him to re-schedule. She stated the last e-mail she has from Mr. Potter is that he will check with BRRAM and get back to the Township to reschedule the meeting, and she asked why that has not occurred. Ms. Bussey stated there have been a lot of developments over the last two weeks particular to this case that no one here is aware of except her at this moment. She stated as to the Confidentiality Statement, it came from the Department of Justice and the Attorney General because what is trying to be done, although she cannot go into details, is they are trying to come to a resolution and a settlement that goes around what is legally required by the EIS; and that is why there was a call for a Confidentiality Statement.

Ms. Bussey stated BRRAM did file a lawsuit in November, 2016 against Allegiant for opening operations without the EIS. She stated the BRRAM Board members paid for this out-of-pocket. She stated this went out to California, but no one know why the FAA assigned this to California. She stated it then “mysteriously” came back, and then Mr. Potter was contacted by Ms. Phippen the end of December/early January because she was familiar with this whole process from twenty years ago; and she indicated they need to talk about it, and discussions began. Ms. Bussey stated in February the Township contacted the DOJ as well. She stated in January BRRAM had a discussion with Mr. Kakoyiannis from the Task Force, and they tried to update him as best they could based on what they felt was a very, very sensitive situation. Ms. Tyler stated she is struggling with the confidentiality of this, and Ms. Bussey stated they were told not to talk about it because they were trying to come up with a solution and the possibility of a settlement. Ms. Bussey stated in February when Mr. Truelove made the call to the Attorney General, the question was asked if Lower Makefield wished to become part of the process and to sign the Confidentiality Statement to become part of that process. Ms. Bussey stated with regard to the lawsuit, there were statements coming due in March. She stated to their knowledge for whatever reason, Lower Makefield had not agreed to sign the Confidentiality Statement. Ms. Bussey stated just this past week Allegiant has intervened and signed the Confidentiality Agreement. She stated the lawsuit deadline has been extended, and they do not have to have the Brief until April 15.

Mr. Benedetto stated Lower Makefield is currently the only ones who do not have a seat at the table. Ms. Tyler asked Mr. Fedorchak if Lower Makefield Township has ever entered into a Confidentiality Agreement that would prevent the Township from providing the residents information in the twenty-five years that he has been the Township Manager, and Mr. Fedorchak stated he does not recall that has ever been done. Mr. Truelove stated he has not had this experience either. Ms. Tyler stated she is very troubled by this.

Ms. Bussey stated she feels they are putting labels on a process that no one present is expert at; and she added that Mr. Potter was not at all surprised about the request to sign a Confidentiality Statement, and Allegiant was not either as they signed it.

Ms. Tyler asked Ms. Bussey if BRRAM is interested in meeting with the Trenton Mercer Airport Committee, and Ms. Bussey stated they have had conversations with them and provided them with information. Ms. Tyler asked if this included Mr. Potter, and Ms. Bussey stated it did not as Mr. Potter is not involved in that part.

Ms. Guiniven stated they did not understand that they could sign the Confidentiality Agreement and get the information. Ms. Bussey stated the Task Force could not, and it would have to come from the Township. Mr. Kakoyiannis stated he had a conversation on Monday with Counsel in Washington, and she indicated she could not explain more unless they signed the Confidentiality Agreement and she would have to get permission from Allegiant and BRRAM. Mr. Kakoyiannis stated they are talking about a solution settlement, and they have no idea of the scope of it. He stated Rob White would be able to explain the distinction between Settlement A and Settlement B.

Ms. Bussey stated no one knows the terms because there are no terms yet. She stated BRRAM has provided a list of what they want for mitigation including sound, traffic patterns, etc.

Mr. Benedetto stated he feels they are getting bogged down with the Confidentiality Agreement that they could very easily be a part of if they would enter an appearance either through Mr. Truelove or by putting Mr. Potter in place. He stated he is not troubled at all by a Confidentiality Agreement, and he is only troubled by the fact that the Township does not have a seat at the table. He stated the Township has every right to be a part of this. Mr. Truelove stated the only way for that is that they intervene with Counsel or they align themselves with Mr. Potter and allow him to represent the Township as a Party. Ms. Bussey stated if that is the case, they should have a discussion with Mr. Potter regarding fees and the parameters of his service representing the Township. Ms. Tyler stated she does not feel they should get into an Agreement with an attorney blindly.

Mr. Lewis stated the last e-mail exchange they got from Mr. Potter was February 28 that he would get back to the Township ASAP, and there is nothing from Mr. Potter after that. Ms. Bussey stated that was two weeks ago, and she has reviewed what has happened over those two weeks. Ms. Bussey stated she has no problem contacting Mr. Potter tomorrow and telling him to get back to the Township to set up a date since that is what the Board is waiting for. Mr. Lewis stated the Township is willing to entertain options to address the issues; and part of the reason they appointed the people on the Task Force that they did was because they want to address the issue. Mr. Lewis stated they had some challenges with Mr. Potter's legal strategy from a number of attorneys. He stated the problem is when they ask for a meeting, they do not get a follow up for two weeks.

Ms. Guiniven stated she feels they should consider where they want to go from here and not discuss the past. She stated if they can sign the Confidentiality Agreement and there are some initial funds to start a conversation with Mr. Potter, she does not feel they want to wait three more weeks until the next Board of Supervisors' meeting to get the go ahead. She stated this would not mean that they are going to lock themselves in ad infinitum if they get permission and some funding from the Board of Supervisors to move forward and have a more dynamic conversation with BRRAM.

Ms. Reiss stated Mr. Fritchey understands the Department of Justice as he worked through the Department of Justice for over twenty-five years. She stated he was mystified by several things Mr. Potter had done, and he does not have a lot of confidence in some of Mr. Potter's strategies. She stated she would not be comfortable signing something at this point, and she does not understand why the Justice Department or anyone would not want to share the information with the Township. She stated she feels it may be a "smoke screen." She stated she would not want to make a decision without the input of someone who has worked with the Department of Justice to hear his viewpoints.

Ms. Guiniven stated if they see that it is a "smoke screen," they would stop it; but they cannot find out if it is a smoke screen unless they have the tools to determine this. Mr. Kakoyiannis stated they are charged with fact finding, gathering, and reporting; and if they cannot get the facts, they should just dissolve the Committee.

Mr. White stated BRRAM's initial lawsuit was to sue for an EIS, and this is the Government advising itself to do something or not to take action. Mr. White stated he is interested in the bottom line and what are the actual noise abatement procedures they might implement in a Settlement. He stated if they do not know this, they cannot inform the Board of Supervisors. He stated they need the details so that they can inform the Board properly.

Ms. Bussey stated if they want this, they should have Mr. Potter come to a meeting and have this explained. She stated with all due respect to Mr. Fritchey, he has no experience in environmental law. She stated Mr. Potter and his firm have been constantly criticized when he met with the Board and explained why they took the action he did and the “games being played” by Mercer County and the FAA. She stated they should set up a meeting now and decide if they want to sign the Confidentiality Agreement. She stated if the Township does not get involved now, it is going to be too late. She stated they are talking about “putting this to bed” now, and the Task Force can then concentrate on the next piece which is the Airport expansion which has nothing to do with what they are discussing right now.

Ms. Tyler stated she does not feel she has the right to enter into a Confidentiality Agreement on a matter of Township-wide importance. Ms. Bussey stated they could discuss this at the meeting. Ms. Tyler stated Mr. Truelove and Mr. Fedorchak are going to judge that – not Mr. Potter.

Mr. Benedetto stated he feels they need to set up a meeting with Mr. Potter and determine what will allow the Township to get visibility into the process. He stated they should also set some financial parameters at that meeting. He stated the Board can then make a decision whether they want Mr. Potter as their Counsel or someone else.

Mr. Truelove agreed they need to have a meeting as soon as possible to get as much information as they can and have Mr. Potter meet with the Task Force, members of the Board of Supervisors up to two, Mr. Fedorchak, and himself to find out what would be the best way to move forward so that the Township can have a seat at the table, craft an agreement among the interested Parties, and leave the meeting with an understanding of what they should do and follow through as quickly as they can. Ms. Guiniven agreed with this but noted there are three weeks until the Board of Supervisors meets again. She stated they could vote in Executive Session and give Mr. Fedorchak authority to go to a certain dollar level so that they do not have to wait three weeks. Mr. Truelove stated that could be done and then just be ratified by the Board at their meeting.

Mr. White stated the EIS is a complicated Government document. He stated the Mercer County Authority does have the authority to ask the FAA to help fund and do the noise abatement study and implement the noise abatement program; and it is as simple as the Airport Authority initiating it although that has not happened. He feels it would be a goal of the Task Force to get Mercer County to ask the FAA for help. He stated the FAA has funded approximately \$5 billion for 275 Airports since they developed the program. He stated the funds are out there, and the Airport Authority just has to ask; and he feels they can work with them amicably on this and not worry about lawsuits.

Ms. Tyler questioned what impetus they would have to say yes since currently they are directing flights over Pennsylvania. She stated the EIS would put some of those flights back over New Jersey.

Ms. Reiss stated she feels it is good to sit with people at the table, and that was her feeling when they set up the Task Force; and they would try to do something more Government to Government and less adversarial so they would get a better result, since in twenty years the Court system has not resolved this. Ms. Guiniven stated they are dedicated to two tracks – one is talking with them, although she does not expect a “welcome mat.” She stated the second is looking for both an EIS and noise abatement.

Mr. Joe Menard stated he feels the Parties to the Non-Disclosure Agreement should get together to determine who else could be a Party, and Mr. Truelove stated if they would agree to that, it would be an easy solution. Mr. Menard stated once they have that they can then find out more about the “settlement.” Mr. Menard stated Ms. Guiniven just indicated that they want to get the EIS, but just getting them to comply with an EIS is not the only answer; and they want to make sure that the Township is not bound as a Party to something that they can not then split off from.

Ms. Guiniven stated if they can get the meeting set as soon as possible and have the Board make some kind of decision they can make by Resolution without waiting for three weeks, that would be terrific. Mr. Truelove stated they will set up a meeting, and he will contact Counsel for all the Parties tomorrow asking them if they will allow the Township to have a seat at the table.

Ms. Bussey asked that the Task Force take the time to talk to BRRAM so that in the future when they are talking to people in New Jersey, the Task Force will know what they are up against and why BRRAM had to go the route they did. She stated twenty years ago BRRAM tried the nice approach, and the litigation was a result of direct disobedience of Mercer County not doing what they were supposed to do.

Mr. Matthew Wund, 34 S. Homestead Drive, stated he would like to discuss the proposed land purchase by the Riverstone Church which is Township land and is a mixed forest and wetlands habitat. He provided information on his background and expertise in ecology and biology. He stated he is against the purchase of this land by the Church for their parking lot. He discussed the wildlife in the area as well as the impact of having a parking lot in this area. He discussed alternatives for a parking lot in this area including using the Church’s existing land or working with the Pennsbury School District.

Mr. Benedetto stated there was previous discussion about language in the Pennsylvania Township Supervisors Handbook regarding a conflict of interest; and he read aloud this Section. Mr. Benedetto stated having considered this further, he feels that when he Abstained from voting on the Church matter in beginning, he was right. He stated the Board's decisions need to be above reproach; and if the sale went through, it would always be tied to his affiliation with the Church so he will now Abstain from voting on this. He stated he does feel that the Church needs to move on from this and onto other options. He apologized to the Township and the Church or putting everyone through this.

Mr. Tony Kehoe, 476 Liberty Drive, stated he applauds Mr. Benedetto for his decision. Mr. Kehoe stated at the last meeting he asked if the Church had approval to build the new 800 seat Sanctuary and to put in a 120 space parking lot on their existing property. Ms. Tyler stated they did look into this, and the Approval was for an expansion – not a Sanctuary expansion. Mr. Kehoe stated he reviewed the Township files on the Church with another engineer and an architect on March 3. He stated he would like to provide facts and recommendations which he intends to be helpful to the community as a whole.

Mr. Kehoe stated the Church is currently allowed a 17.7% impervious surface area, and they are built out to an impervious surface area of 16.8%. He stated this would translate to an permissible buildable area of approximately .1 acres which is not enough to build a 120 car parking lot on their grass field. He stated he saw no documentation that Riverstone Church has approval to build a new 120 spot parking lot on the grass field next to their existing Sanctuary. He stated he felt that he had heard in a prior presentation that they did have approval, but he has seen no evidence of that. Mr. Kehoe stated the drawing of May 15, 2015 states a sewer limit of 1,875 gallons per day, and at 3 gallons per day per permanent seat this translates into a maximum Sanctuary size of 625. In addition, he saw no documentation indicating that Riverstone has approval to build a new 800 seat Sanctuary on their existing property. Mr. Kehoe stated at the January 18 meeting he felt he heard statements indicating that they had the ability to build the 800 seat Sanctuary.

Mr. Kehoe stated if parking was a problem when the old Sanctuary held 400 people, and they have a total of 240 parking spaces with 170 on site and 70 at Edgewood that is a large number of spaces for 400 people so the parking should be sufficient. He stated he questions if the parking issue is one of not accounting for members who are on site but not attending services. He stated he knows that the Church has classrooms and they hold instructional services in between their religious services, and they may be holding them concurrent. Mr. Kehoe stated he reviewed the Township Code and there are two parts to the Code one being the number of permanent congregation seats being divided by three and the second is you sum up all the floor areas that can hold fifteen people or more, and you divide that total sum

by 40. He stated he did not see explicit calculations for the second part; and you are to take the higher of the two numbers. Mr. Kehoe stated he is suspicious that they are not accounting for people who are there but not in the Sanctuary. He stated he would like to follow up with the Township engineer on the secondary calculation. He stated before they discuss expanding the Sanctuary or adding new parking spaces, they need to see where they are at now; and he has not seen evidence that has been correctly assessed. Mr. Kehoe stated the Township has the responsibility to make certain their Code is enforced, and he should be able to get a direct answer from the Township.

Ms. Tyler stated she understood that the Township gave Mr. Kehoe access to look at the file. Mr. Kehoe stated he was given access to the drawings which were in approximately twenty-nine boxes, and he took out what he felt were the pertinent parts. He stated he only had an hour so he does not know what the area of all the twelve classrooms are or the area of the thirty-eight seat café, etc. He stated he would like to be able to come back and make an appointment with the Township engineer and do those calculations. He stated he feels the problem should be clearly defined.

Mr. Fedorchak asked Mr. Kehoe to summarize this in writing, and Mr. Kehoe agreed to e-mail it to everyone. He stated he sent Mr. Majewski an e-mail asking him to confirm things, but he has not heard back. Mr. Fedorchak stated he knows that Mr. Majewski did send Mr. Kehoe an e-mail, but it may not answer all the items he has raised this evening.

Mr. Kehoe also noted that the Traffic Study on file is approximately twenty-five years old for four hundred people so before anything else is done, he would highly recommend a new Traffic Study.

Mr. Fedorchak stated they could set up a meeting between Mr. Majewski and Mr. Kehoe. Mr. Kehoe stated he would like the problem defined so that they can work with the Church and get an amiable solution for everybody.

Ms. Lisa Baxter, 208 Arborlea Avenue, stated Elcon came out officially with their Phase II Application on March 2, but it did not include the Air Permit Application. She stated everything is accessible at DEP as well as some Library locations. She stated Elcon is applying to have four of the drawings be confidential. She stated they are in the 90-day review period at this time which means the DEP will look at the material to make sure it is complete. She stated at the end of the review period, they will decide whether or not it is complete; and if it is not complete, it will go back, and it will start all over again. She stated until it is determined complete, it is not up for official comment. Ms. Baxter stated there is a link to the Application on StopElcon.com.

Ms. Reiss asked if there is anything in the Application regarding transportation which is her concern; and Ms. Baxter stated while she has not gone through the whole document, they are supposed to have everything in there in specific detail. She stated transportation was addressed previously in Phase I; however, Ms. Reiss stated she was not happy with how they addressed it.

Ms. Tyler asked Ms. Baxter about her comment regarding the Air Permit; and Ms. Baxter stated the Air Permit Application is separate, and there might also be other subsequent smaller Applications although she does not know what they are. Ms. Baxter stated she spoke to the DEP, and they are encouraging Elcon to submit the Application for the Air Permit now so that they have everything at one time.

Mr. Lewis stated on March 8 the Environmental Advisory Council met and they discussed reviewing the Phase II Application; and they have agreed to have a reading party as they are skilled to review it and render an assessment. Mr. Lewis stated the Township retains all the rights to intercede in this case and the prior Solicitor indicated that the Township has the legal wherewithal to do that.

Ms. Baxter stated if there is anyone concerned about this in the Township who is an engineer or a specialist of some sort and is willing to contribute, they would appreciate their help. She stated Lower Makefield Township residents should understand that the authority over this is really Falls Township; and if they know anyone in Falls Township, they should encourage them to attend the Falls Township meetings and speak up. She stated Falls Township now only has one meeting a month on the third Tuesday of the month at 7:00 p.m.

Mr. Benedetto asked Ms. Baxter about the status of the documentary, and she stated it is almost completed; and she feels the air date will be May 18 at Newtown although this is not definite. Mr. Benedetto stated he understands that State Representative Perry Warren has expressed an interest in having as many public hearings as possible, and Mr. Benedetto asked if they have committed to any public hearings yet; however, Ms. Baxter stated they will not know anything about that until after the 90-day review period. She stated DEP will publicize the exact dates, and StopElcon.com will as well on their Website. She stated she believes they are required to have two public hearings. She stated Mr. Warren is asking for additional ones.

Ms. Reiss stated she does not understand why they would not want to build the facility near where the waste is being produced, and Ms. Baxter stated that is what StopElcon.com is encouraging. Ms. Reiss stated they would not then have to transport it. Ms. Baxter stated some of it is from Waste Management, and she feels it should be dealt with where it is. Ms. Baxter stated the other problem is they are trying to process too much and too many different things in one facility.

Mr. Benedetto stated he has been advised that there is still a serious cut-through traffic issue that exists in West Ferry, and he feels they should send a letter to Falls Township indicating that they should do a Traffic Study to show the impact of the proposed Wawa on West Trenton. He feels Lower Makefield should also have a seat at the table so they can have a discussion as to how that will impact Lower Makefield residents. Mr. Fedorchak agreed to write a letter to Falls Township in this regard.

Mr. Mark Bortman, 1655 Terracedale Road, stated he is one of the Co-Chairs of the EAC. He stated there has been a tremendous surge of interest in the EAC recently, and they have no vacancies. He asked if it would be possible to increase from one Alternate to three Alternates. Mr. Benedetto stated anyone could attend the meetings. Mr. Bortman stated they have seven members and one alternates with additional people regularly attending meetings, and they would like to give them some additional say. Mr. Lewis stated the benefit of having alternates is that sometimes they can get technical advice from them that they would not have had otherwise, and that would be helpful. Mr. Benedetto stated they also have two people who have expressed an interest in serving on the EAC, but they have not interviewed them yet because there were no open positions.

Mr. Truelove stated the EAC was established by Resolution so the method to increase the number of alternates would be by having another Resolution address that issue.

Ms. Tyler stated if someone wanted to be involved in the EAC it is an open meeting, and she asked why the designation of being an alternate would impact their desire to participate on the Committee. Mr. Benedetto stated he feels it is nice to be there as a member/alternate as opposed to just a member of the public. He stated he feels it also results in a group of people who are engaged; and if there is someone unable to continue as a member, they would then have two to three people already from which to choose.

Ms. Tyler asked Mr. Truelove to circulate the existing Resolution to the Board of Supervisors so they can review it.

Mr. Luke Butler, 2321 Weinmann Way, stated he feels Mr. Benedetto has demonstrated a level of humility and humanity that is uncommon in elected officials, and he appreciates what he has indicated tonight with regard to the Church. He asked what would now happen if there are only four votes, and Ms. Tyler stated a Motion would fail if the vote were two to two.

Mr. Sean Wagner, 564 Countess Drive, stated he is the Vice Chair of the Board of Elders of the Riverstone Church. He stated they have a desire to accommodate growth, and there are a number of solutions as to how they can do this. He stated they have met with a number of neighbors and approached the Pennsbury School District; and in the next few days they will put a letter together to the School District laying out possible ways they can work together to arrive at some parking solutions that would work for both the Edgewood School as well as for the Church. He stated they love the community and half of the Board of Elders are Lower Makefield Township residents as are a large number of their congregants, and they want to have good relationships with the community. He stated they are not prepared to address Mr. Kehoe's concerns tonight, but they have done everything in their power to be compliant with the Approvals they have received. He stated they are at Phase 1A of their expansion; and for anything that would come after that they would need to re-visit anything that has been Approved since over time things change. He stated they are committed to working in good faith with the Township and the residents.

Ms. Kimmel Nacewicz, 252 Reading Avenue, asked about the status of the Sandy Run Road closure. Chief Coluzzi stated they are currently working with the Township traffic engineer and the Township engineer trying to come up with a solution to the opening of Sandy Run Road. He stated they are in the early stages of coming up with a solution, but he does not have a timeline.

Ms. Kathy Hirko, 1450 Dolington Road, stated she understands that the Township Manager is retiring December of this year; and Mr. Fedorchak stated that is a possibility, but no decision has been made yet. Ms. Hirko also thanked Mr. Benedetto for his decision with regard to the Church.

Ms. Katherine Burke, 2313 Weinmann Way, stated in January she e-mailed pictures she took of the wooded lot near Church to the Board; and she thanked the Board for acknowledging those photographs.

Mr. Zachary Rubin, 1661 Covington Road, commended Supervisor Benedetto for taking the principled position. Mr. Rubin stated with regard to the LEED Certification for the Community/Senior Center there is a Township Ordinance that states that all new construction of public buildings must conform to either LEED Silver Certification or its equivalency. He stated this is the first public building that is being built under that Law, and they are talking about "walking away" from the Law of the Township. Mr. Rubin stated he was at the March 4, 2015 meeting and Mr. Hibbs indicated that getting Certified LEED costs tens of thousands of dollars; and they indicated they were not going to go for the Certification, but they were going to go to the Certified equivalency; however, Mr. Rubin stated that is not what the Ordinance says, and it says it is to be the Silver Certification equivalency.

Mr. Rubin stated he feels Mr. Hibbs was trying to confuse people saying that they were not going for the Certification but for the equivalency, and this is a lower level. Mr. Rubin stated if the Township backs away from the Ordinance, he feels there is a conflict of interest since the Township is the owner of the property, and they are saying that they want relief from their own Ordinances which he feels is wrong. He stated the Township just hired a Code Enforcement Officer to enforce our Laws, and he feels a vote to try to excuse themselves from a Law the first time it is being invoked is disingenuous and wrong.

APPROVAL OF MINUTES

Mr. Lewis moved, Mr. Benedetto seconded and it was unanimously carried to approve the Minutes of March 1, 2017 as written.

APPROVAL OF FEBRUARY 21, 2017 AND MARCH 6, 2017 WARRANT LISTS AND FEBRUARY, 2017 PAYROLL

Ms. Reiss moved, Mr. Benedetto seconded and it was unanimously carried to approve the February 21, 2017 and March 6, 2017 Warrant Lists and February, 2017 Payroll as attached to the Minutes.

APPROVE ISSUING NOTICE OF INTENT FOR AWARD OF 2017 ROAD PROGRAM

Mr. Eisold stated on March 8 they opened the Bids for the 2017 Lower Makefield Township Road Paving Program, and they received six competitive Bids ranging in price for the Base Bid from \$1.366 million to \$1.8 million. He stated the first step in the process is to consider Issuing the Notice of Intent to award. He stated the contractor will submit all his documentation, and it will then be put on the Website for the Responsible Contractor's Ordinance. He stated it is recommended to award the Bid to the apparent low Bidder for the Base Bid, Harris Blacktopping.

Mr. Benedetto moved and Ms. Reiss seconded to Issue the Notice of Intent.

Mr. Lewis asked if the \$1.3 includes the Alternates; and Mr. Eisold stated the \$1.36 was only for the Base roads, and after they issue the letter, he and Mr. Fedorchak will have some discussions with the Director of Public Works and then consult with the Board of Supervisors to determine what other roads that were Bid Alternates they would like to include in the project. Mr. Lewis stated they now have a Budget of \$1.5 million for road repairs, and Mr. Fedorchak agreed.

Motion carried unanimously.

APPROVAL OF MEMORIAL PARK DCNR GRANT RESOLUTION #2336

Mr. Eisold stated they are asking the Board to approve a Resolution to apply for a DCNR Grant which would include construction of the improvements within the Memorial Park east side of the project. He stated this would not be the infrastructure, rather it would be tennis courts, fitness stations, bocce, horse shoes, gazebos, and some of the landscaping including the path. He stated they are looking for a Grant of \$500,000 for which there would be a 50/50 match; so if they were successful, it would allow \$250,000 to come from DCNR for this project.

Ms. Reiss moved and Mr. Benedetto seconded to approve Resolution #2336 allowing the Township to proceed on the DCNR Grant Application.

Mr. Lewis asked if this would bind the Township into doing this project if they do not receive the funding, and Mr. Eisold stated it would not. Mr. Lewis asked if they received the funding and their priorities changed, could they alter the timing of consideration of that; and Mr. Eisold stated there is always the option to say no. He stated it is a long Grant process; and while the Applications are due by April 10, they will probably not hear anything until late this year; and if they were successful, and the Township decided to move forward with it, they would probably proceed with it next spring.

Ms. Tyler asked that they look into whether they should be making a similar Application for the Snipes Tract. Mr. Eisold stated he will discuss this with Ms. Goldstein from his office. Mr. Eisold stated he does know that it is based on a point system and a lot of it is community based and there are a lot of different parameters. Ms. Reiss asked if there are other places they could go for Grants for athletics; and Mr. Eisold stated there are other Grants out there, and the DCNR is one that is prevalent, and they were able to obtain it before.

Mr. Alan Dresser, 105 E. Ferry, stated he is a member of the EAC; and he asked where these different facilities will be located at Memorial Park. Mr. Eisold showed him a copy of the Plan. It is on the eastern portion of the Park where the cornfields are located. Mr. Dresser stated it appears they will need to have a 300' road to connect the existing roadway in the Park to the new parking lot by the tennis courts, and Mr. Eisold agreed. Mr. Dresser asked if any of the money from the Grant will cover the parking lot and the road; and Mr. Eisold stated it will not, and it is for what he described. Mr. Dresser stated they are going to have to transect a stream; and Mr. Eisold stated they are going to go over a narrow wetlands of about 10' to 15' wide in that location, and they are applying for the General Permit to allow them to cross over the wetland area. Mr. Dresser stated rather than taking productive farmland out of production and adversely impacting some environmentally-sensitive areas, and in order to save some money, they could put the tennis courts and the bocce courts, etc. in the existing developed part of the Park.

Mr. Dresser stated there are lots of grass areas where there is plenty of room for them, and there is existing parking. Mr. Fedorchak stated they can look into this; however, what is being proposed was reviewed extensively several years ago in the Land Development Plan process which involved the residents in that area, and what is being proposed this evening is what was approved as part of the original Land Development Plan. Mr. Dresser stated that could be revised. Mr. Dresser stated he feels they have already deviated from the Plan that was on the Website, and they could deviate a little more.

Mr. Dresser stated he looked at the Project Status Report on the Website, and for the expansion of Memorial Park on the east side, they have already submitted a NPDES Permit; and he asked why they are spending money doing that if they do not yet have the Grant. Mr. Fedorchak stated in this year's Budget they set aside \$400,000 to begin the expansion into the east section, and that is meant to cover the road and the stormwater facilities which would include the NPDES. Mr. Dresser stated he feels that is a lot of money, and he feels there is a simpler solution.

Ms. Reiss asked if it is possible that for the expansion they could use pervious surface parking instead of more asphalt, and Mr. Eisold stated they could look into that.

Mr. Benedetto stated they should be conscious of preserving the aerial view when they start development as it is special to a lot of people.

Mr. Eisold stated with regard to Mr. Dresser's earlier comments, the west side with the path and the Arboretum, it is actually much less dense on the left side than was originally proposed.

Motion carried unanimously.

APPROVAL OF HILDEBRAND SUBDIVISION

Mr. Eisold stated this property is approximately 11.4 acres at the intersection of Big Oak and Stony Hill Roads. He stated the Township intends to preserve the majority of this property in the amount of 8.5 net acres of land, and the remaining land at the intersection will be retained by John and Janet Hildebrand. He stated the Plan was reviewed by the Planning Commission which recommended approval of the Plan including four Waivers which really deal more with construction aspects, and there is no construction proposed at this time at the property. He stated they are using the remainder of the Open Space money that the Township has as well as some additional funds to secure the area shown in green on the Subdivision Plans.

Ms. Tyler stated the Hildebrand property is one of the two properties that were acquired this year. The Hildebrand property was purchased with Open Space money. She stated they are being requested to Subdivide the property as the Hildebrands did not sell the entirety of the property, and just sold the Township 8.5 net acres.

Mr. Lewis moved, Mr. Benedetto seconded and it was unanimously carried to approve the Hildebrand Subdivision as described by Mr. Eisold.

DISCUSSION OF KAPLAN TRACT PRELIMINARY/FINAL MINOR SUBDIVISION

Mr. Truelove stated this is an Application for Preliminary/Final Plan approval and Minor Subdivision approval for the Kaplan Tract located at 1561 Dolington Road, Tax Map Parcel 20-003-026-001. He stated the matter has been reviewed by the Planning Commission which recommended approval subject to one recommendation which has already been agreed to by the Applicant.

Mr. Russ Sacco, attorney for the developer, was present with Mr. Hintenlang, engineer. Mr. Sacco stated his clients are present and have been Township residents for over seventeen years. He stated the current site consists of 4.8 acres and it contains an old farmhouse that his clients have been able to bring back to its historic nature. He stated they are proposing to subdivide off a small lot of one acre which will be accessed via a driveway on the north portion of the lot so that when you look at it from the road it preserves the historic nature of the farmhouse. Ms. Tyler asked if it is a flag lot, and Mr. Sacco agreed. Mr. Sacco stated they are seeking Preliminary/Final approval since they are only seeking one lot.

Mr. Mark Hintenlang noted the review letter from Boucher & James dated 2/28/17, and it includes five items plus the Waiver requests. He stated they will comply with Items #2, #3, #4, and #5. He stated Item #1 is a Zoning item and if they do not receive a Waiver, they would not comply with Zoning. He noted Waiver #6 which is to not require a reverse frontage lot. He stated in order to provide a reverse frontage lot, they would have to have a road in back of the development; and they did not want to create any additional surfaces. He stated a flag lot has the least impact to the area.

Mr. Eisold stated based on his letter of February 28, Mr. Hintenlang indicated they will comply with these mostly administrative issues. He stated there are a number of Waivers that are being requested that he is in agreement with including the reverse frontage as they are proposing a flag lot.

Mr. Truelove stated the Planning Commission reviewed this on January 23 and recommended approval. He stated at that time they were working with Mr. Eisold's January 12 review letter; and the Planning Commission recommended that with regard to the pipe size the Applicant was asking for a Waiver to use 8" pipe where 18" was required, and they requested that they increase that as much as they could. Mr. Hintenlang stated they did increase that to a 12" pipe which is still a Waiver request. Mr. Eisold stated he would be in agreement with that.

Mr. Merrick Wilson, 1332 Moon Drive, stated he has been a resident for forty years. Mr. Wilson stated he developed Towering Oaks of Yardley which is a seven lot Subdivision across the street from the property. He stated the Subdivision goes back twenty years; and at that time it was requested by the Township that even though his Subdivision was a seven-lot Subdivision, he was requested to make provisions for sanitary sewer for ten lots to provide for neighboring properties that would want to tie into it if there were failing systems or newly-created lots so that they would not be building septic systems especially since Township Ordinance #178-103 clearly requires that any property that is within 1500' of a Municipal sewer must tie in and cannot put in a septic system.

Ms. Tyler asked if the Kaplan Subdivision is within 1500'; and Mr. Truelove stated while it is, the problem is that at this point there is not a public sewer system because the Township has not accepted dedication of what Mr. Wilson has developed. Mr. Truelove stated if at some point it becomes dedicated to the Township, it may become appropriate at that time for Mr. Kaplan to tie in; however, at this point there is not a public sewer system and there is both a Development Agreement and a Court Settlement Agreement for litigation initiated by Mr. Wilson back in 1996 both of which indicate that there is still a requirement for public sewer to be dedicated before anything like that would be required. Mr. Truelove stated his position is that the Condition would only apply if the system had been dedicated to the Township, and the Township has not accepted Dedication.

Mr. Wilson stated he would disagree with Mr. Truelove's determination. He stated he has provided the Board with information, and he noted one lot, 1695 Susan Circle, has already tied into the sewer system; and it is one of the seven lots within the Towering Oaks of Yardley Subdivision. He stated he also provided a copy of the bill from that resident who is paying Lower Makefield Township and the Bucks County Sewer Authority for sewer service so it is clear that this is being paid to a Municipal sewer system.

Ms. Tyler asked Mr. Wilson if he has dedicated the sewer system to the Township, and Mr. Wilson stated he has not.

Mr. Benedetto stated he was at the Planning Commission on January 23. He stated there are two lines that have been connected one at 1695 Susan Circle and one at 1574 Dolington Road; and he feels logic dictates that if they are going to put a development in, there is a public sewer system, and even though it has not been Dedicated yet, it is still a public sewer system. He feels they are getting stuck on a legal technicality. Mr. Benedetto read from a letter from the Township engineer at the time dated 7/19/06 regarding the sewer connections. Mr. Benedetto stated he feels this is everything but in name a dedicated line. Mr. Benedetto stated he understands that Mr. Kaplan indicated he would like to tie into a public sewer system.

Mr. Sacco stated there is a significant distinction between a public system and what Mr. Wilson has. He stated typically the way this works is that you pay the Municipality or the Authority a Connection Fee to connect to the system; however, in this case, they would be negotiating with a private owner who has made every indication that if they want to connect to his system, the fee would be at least five to six times the Township's connection fee. Mr. Sacco stated the other issue is that if the private system fails since it is not dedicated to the Township, Lower Makefield would not do the work; and the work would have to be done by Mr. Wilson who will charge the residents who are connected to that line. Mr. Sacco stated the line has been in for twenty years, and he feels there is a reason it has not been dedicated. Ms. Tyler asked what is the reason, and Mr. Sacco stated it may be that the system is not up to Township specifications and requirements. He stated the one on-site connection is Mr. Wilson's family member. Mr. Sacco stated if this were a public system, it would make financial sense for his client to connect, and the lot would be more valuable if it were connected to a public sewer. Mr. Sacco stated Mr. Kaplan is not intending to build on the site in the immediate future, so hopefully Mr. Wilson will bring the system up to the Township requirements and dedicate it to the Township in the next few years; and his client could connect to the public system if the lot has not been built yet.

Mr. Benedetto asked about their plans for sewer, and Mr. Sacco stated they have proposed an on-site septic system.

Ms. Tyler asked Mr. Wilson why he has not dedicated the system to the Township; and Mr. Wilson stated once all lots are sold and the homes are built, it would be dedicated to the Township the same way the roads are. Mr. Wilson showed the Board the map that was done for the original Subdivision in 1978 which shows that the Township at that time required that he build a stub in front of the two lots that are being proposed specifically for their use because the Township wanted these lots tied into the system. Mr. Wilson stated at the Planning Commission Mr. Kaplan testified that he would tie into the public sewer system. Mr. Wilson stated it is not an option to tie into a septic system if you are within 1500'. Ms. Tyler stated they do

not have a public system to access. Mr. Truelove stated if it was a public system they would have to tie in, but it is not a public system. Ms. Tyler stated because it was not dedicated, they cannot require them to tie in, and Mr. Truelove agreed.

Mr. Benedetto stated the Board could require them to do it because they are granting Final Approval for the project, and they could say as part of the approval process that they have to tie into Mr. Wilson's non-dedicated system. Ms. Tyler asked if the Township has ever evaluated that sewer system, and Mr. Truelove stated he is not aware that they have.

Mr. Wilson stated he had his own licensed engineer go out and do the pressure testing, and he had to do that before the first person tied into the sewer system. He stated it was approved by Hank Hoffmeister and the Sewer Authority before the first person tied in. Ms. Tyler asked Mr. Wilson when he is going to dedicate the sewer system to the Township; and Mr. Wilson stated it will be done sooner rather than later since two of the lots have already been sold to Triumph Building Group, and they have the option to buy four of the other lots. Mr. Wilson stated the question is not so much when it is going to be dedicated; and Ms. Tyler stated that is the question because they cannot require Mr. Kaplan to tie into a sewer system that the Township does not have domain over. Mr. Wilson stated he feels the Township does, and this is what Mr. Benedetto was saying. He stated when the Board gave him his Subdivision Approval, he was required to put in provisions for ten connections. He stated he is asking Mr. Kaplan to pay a proportionate share of the cost. He stated if they do not tie into his system, they are required to tie into some other public system since they cannot put in a septic system since they are within 1500' feet. He stated the only other alternative they might have would be to cross wetlands and ask for an Easement to disturb the Farmland Preservation property. Mr. Benedetto stated that would cost significantly more.

Ms. Tyler asked why this was not discussed at the Planning Commission, and Mr. Sacco stated it was discussed. He stated the Township solicitor wanted to review the Development Agreement; and that was researched, and there is no written agreement that indicates what Mr. Wilson is saying. Mr. Sacco stated his client would like to connect to a public system as it would be more cost effective and would make the lot more valuable; but the problem is if the Board makes the Motion Mr. Benedetto is discussing, that would permit Mr. Wilson to name his price if the only way his client can develop his lot is by appeasing Mr. Wilson and the numbers Mr. Wilson has been discussing are \$25,000 to \$30,000. He stated he does not feel the Township connection fees are that high. He stated if they were to pay that exorbitant fee, they would also be taking a significant risk since it has been twenty years since that system was installed; and in twenty years, if he has still not dedicated the system, what would happen if the line failed or it needed I & I work.

Ms. Tyler stated if this were a public sewer system, Mr. Kaplan would be required to tie in. Mr. Fedorchak stated he would have to pay the connection fee whatever it is for that particular area. Ms. Tyler asked how this compares to what was done at Edgewood Village; and Mr. Fedorchak stated Edgewood Village was a Township initiated project, and they received a State Grant to offset the total cost, and what was remaining was passed onto those property owners who benefitted from the public sewer. He stated in that case there was an assessment per property owner plus a connection fee.

Mr. Benedetto stated he feels that they are going to have to connect to a public sewer system because of the Township Ordinance. He stated they will have to build a new public sewer line that will include the cost of cutting through wetlands and Farmland Preservation property, and it will be a second sewer system where one already exists. Mr. Benedetto stated he feels they are discussing a technicality since there is a sewer line that exists which two people have connected to, and they send their sewer to Morrisville Sewer Authority. He stated it does not make sense for them to build a second sewer system just because the other one has not been dedicated yet. Mr. Sacco stated they are not proposing to build another sewer system, and the system would be an on-lot septic system; and they are not proposing to go a different route.

Mr. Eisold stated it is not uncommon for the Township to require a developer to provide for additional tie ins of houses in case there is a failing system in the future, and someone may need that tie in. He stated this is done many times as part of the approval process with the developer, and most times the additional cost is negligible since the pipe size and number of manholes would not change. He stated although he was not involved in this particular case, it is common for the Township to require this of a developer so that they can potentially help someone in the future.

Mr. Eisold stated what he feels is troubling is the timeframe for these seven lots since typically the development would be built and dedicated; and if it were even five years, that would be a long time. He stated in this case a significant length of time has gone by, and he does not feel anyone has checked out the system to see what the existing condition is with I & I, etc.; and at a minimum that would have to be done before they would require someone else to tie in.

Ms. Tyler asked if the Township has the ability to require a tie in to a system that is not dedicated to the Township, and Mr. Eisold and Mr. Truelove both stated they do not believe so.

Mr. Eisold stated there is a mechanism for someone who has put something in called a Recapture Agreement; and if someone puts something in for the purpose of someone else in the future, and there is an Agreement that after so many years they are due money back for the outlay of the additional money, but he is not aware of any Recapture Agreement in this situation which would provide some payback to Mr. Wilson for his initial up-front costs. Mr. Truelove stated the only Agreements between Mr. Wilson and the Township for his project are the Development Agreement dated March 3, 2003 and the Stipulation of Settlement Agreement for the case filed in 1996, and that Agreement is dated January 20, 1997.

Mr. Wilson stated there is not an option for them to put in a septic system, and they cannot. Ms. Tyler stated they can if they do not have access to public sewers. Mr. Wilson stated if they are within 1500' of a public sewer, they must put in the line. Ms. Tyler and Mr. Truelove again stated that they are not within 1500' of a public sewer. Ms. Reiss stated it is not a public sewer since it has not been dedicated. Mr. Wilson stated they can tie into Brookfield Road behind them which is within 1500'. He stated the Testimony of Mr. Kaplan before the Planning Commission was that he would tie into to a public system. Ms. Tyler asked if Mr. Kaplan made a representation to the Planning Commission that he would tie into the public sewer, and Mr. Sacco stated he did not. He stated his client would like to tie into a public system. He stated he feels they should get an answer as to why Mr. Wilson's line has not been dedicated to the Township. Mr. Sacco stated he believes that his client would agree that if at the time he is ready to pull the Building Permit the system has been dedicated to the Township, he will scrap the septic and tie in.

Mr. Benedetto stated technically Mr. Sacco is correct but Mr. Wilson is also correct. Mr. Benedetto stated he is Liaison to the Planning Commission, and Mr. Kaplan did testify that he preferred to be connected to a public sanitary sewer system. Mr. Sacco agreed that he said he would prefer to be connected to a public system. Mr. Sacco stated ideally the system will get dedicated like it is supposed to, and they do not know why it has not been. Ms. Reiss stated she does not understand that either.

Mr. Lewis stated he is sympathetic to the Applicant as it relates to the sewer connection mainly because there is no Dedication in place, and they cannot negotiated reasonable fees. He stated typically the Township creates Connection Fees to make a standard process to include infrastructure to the Township. He stated there are some other Waivers that he is concerned about including the Waiver for sidewalk/bike trail improvements and tree replacement. He stated he has no problem with the storm pipe size given the volumes being discussed. He stated if the intent is not to build immediately, he questions why they would rush this since ideally they would want to connect to a public system.

Mr. Truelove stated they could Table this and determine the timeframe they need to have additional discussion with the Applicant with regard to the Waivers.

Ms. Tyler asked that they discuss the Waivers at this time.

Mr. Hintenlang stated Waiver #1 is to not require an Existing Resources and Site Analysis map. He stated this is a one-lot Subdivision and only an acre, and they provided an aerial plan as requested by the Township engineer. Mr. Eisold stated he feels that would be acceptable.

Mr. Hintenlang stated Waiver #2 is to consider the Application as Preliminary/Final; and Mr. Benedetto stated he would have an issue with this and he would prefer that they give Preliminary Approval and then have further discussion before Final.

Mr. Hintenlang stated this Application would be a Building Permit Plan except they had to do a Subdivision to get the property transferred.

Mr. Hintenlang stated Waiver #3 is to not require that existing significant manmade features within 200 feet of the site be shown, and he stated they provided the aerial. He added there is a very small amount of disturbance to the area.

Mr. Hintenlang stated Waiver #4 is not to provide a Landscape Plan. Mr. Hintenlang stated Mr. Kaplan has put a lot of money into landscaping every year; and if you have seen the property, the landscaping is beautiful, and they did not feel they needed to do a Landscape Plan since Mr. Kaplan takes care of that already.

Mr. Hintenlang stated Waiver #5 is not to be required to widen or reconstruct Dolington Road; and he stated this is a Minor Subdivision, and that would be a large expense to widen the road. Mr. Eisold stated the majority of the property will stay as it is and the area to get back to the new flag lot is approximately 50' to 60' wide so it is relatively narrow. He stated the frontage of the lot will stay as it is. He stated the property has a lot of existing landscaping, and there is also a wall and some fences. He stated he does not see any future requirements that Dolington Road would need to be widened in that location. Mr. Benedetto stated there are Ordinances in place, and he feels they should uphold them or change the Ordinance.

Ms. Tyler asked Mr. Eisold under what circumstances would they require improvements to the adjacent roadway; and Mr. Eisold stated typically it is a function of magnitude of a project, and what is being discussed is the smallest project you could get. He stated when you are doing a large development you would need road widening for accel/decel lanes to get traffic in and out of the site. He stated many of the Ordinances are put in place to make sure the Township has the ability to require certain items on projects, but most of those projects would be much larger than this project.

Mr. Hintenlang stated there is already an 8' shoulder on Dolington Road, and he questioned why they would want more impervious on this road. Ms. Tyler asked what the Code requires; and Mr. Eisold stated it does generically provide for widening of the road, but it is a function of having it in there based on the magnitude of the project.

Mr. Hintenlang stated Item #6 would require them to build a road in the back due to the classification of Dolington Road; and they would have to have a roadway in back of the new lot and have the lot access the new road in the back. Mr. Benedetto stated he feels that is a reasonable request for a Waiver.

Mr. Benedetto stated Waiver #7 is to not be required to install sidewalks and bike and hike trails along Dolington Road. He stated the reasoning was given at the Planning Commission that there are no sidewalks in this area of Dolington Road so it would be a hardship. He stated this creates a perpetuating situation waiving it because there are no sidewalks/bike paths there. Mr. Hintenlang stated the other matter is that there is an existing barn wall right off the edge of the pavement.

Ms. Reiss stated they want to get these sidewalks or at least bike paths in everywhere. Ms. Tyler stated they would be requiring them to put down a path on their property that connects to nothing. Ms. Reiss stated if there is adjacent open space and the Township owns the property, their next Grant may be to continue the paths at the Township's expense. Ms. Tyler asked if they could do a Fee-In-Lieu of, and Ms. Reiss stated if they do that, she would want to make sure that if the Township uses preserved space to put a bike path in, in the future they would be allowed to put something in. Ms. Tyler stated she feels they should look into this further. Ms. Reiss stated they are building an athletic field on Dolington Road; and she feels they should make sure there is a safe path to get to it, and she feels this would be step one to getting the path built.

Mr. Hintenlang stated Item #8 would be to not be required to provide street trees adding there are existing trees along the entire frontage, and there is a barn wall very close to the roadway. Mr. Benedetto stated this would get into the offset which makes sense, and they would consider something for the replacement trees; however Waiver #9 is to not to be required to provide replacement trees. Mr. Hintenlang stated they are taking down some trees, but they are not high quality trees and they were planted in rows. Mr. Benedetto stated this has become an issue with other developments where trees were taken down which were classified as not quality trees; however there is an Ordinance in place, and they are trying to uphold that. Ms. Tyler stated she feels the whole Board will have a problem with that Waiver.

Mr. Hintenlang stated Waiver #10 is to not be required to pay the Fee-In-Lieu of recreation land; and he stated this a two-lot Subdivision with one new lot being created, and there would not be room for a tot lot, etc. for one new lot.

Ms. Tyler stated she feels this is an issue as well.

Mr. Hintenlang stated Waiver #11 is the storm pipe diameter issue they discussed earlier, and this Waiver request was acceptable to the Board.

Ms. Tyler stated she feels the Board is concerned with Waiver requests #2, #4, #7, #9, and #10.

Mr. Wilson stated he would be happy to meet with the Township Manager or anyone else in the Township and show an exact cost of what he paid. Ms. Tyler stated she would like Mr. Wilson to meet with the Township staff to discuss a Dedication Agreement so that the sewer system can get dedicated to Lower Makefield so that they do not have this problem. Mr. Wilson stated he would be happy to do that, but he paid for it. He stated he was required by the Township engineer, Remington & Vernick, to provide for ten lots; and his costs were predicated upon dividing that cost among ten not seven lots. He stated now they are asking everyone of his seven owners to pay, but the other three can tie in without having to pay anything except for the Township Connection Fee which he does not feel is fair since those are seven homeowners that are part of the Township. Mr. Fedorchak stated Mr. Eisold has already explained that up front Mr. Wilson should have entered into a Recapture Agreement with the Township that would allow for the sort of reimbursement, and that was not done. He stated absent that there is no way for Mr. Wilson to get those costs back. Mr. Fedorchak also noted that as stated by Mr. Eisold, it is not uncommon for the Township to tell developers who are coming in to extend the line in a certain direction to provide for future connections for those in the area who do not have sewers. He particularly noted the Harris Tract where they are looking into doing that. He added they will not be establishing the ability for that developer to charge those people anything in the way of an additional connection fee to be paid to the developer. He stated what is being discussed has been routine in Lower Makefield Township in the twenty-four years he has been here.

Mr. Truelove stated he would suggest that since there is no Motion on the table, they should defer this matter to a subsequent meeting. He suggested that Mr. Hintenlang, Mr. Eisold, Mr. Fedorchak, and himself meet to talk about some of the issues; and it would be helpful for the Supervisors to provide their comments about the Waivers. Ms. Tyler stated they have no problem with Waiver #1. She stated with regard to Waiver #2, she feels it is questionable if they would be in favor of giving Preliminary and Final at the same time. She stated they do not have a problem with Waiver #3. She stated with regard to Waiver #4, she would like to make sure there is landscaping in place and the adjacent property is also attended to.

Ms. Tyler stated with regard to Waiver #5 regarding improvements to Dolington Road, she does not believe they have a problem with that request. She stated they also do not have a problem with Waiver #6. Ms. Tyler stated she feels Waiver #7 regarding the bike path needs to be looked at to see the potential tie ins, and if this is something they could start working in. She stated Waivers #8, #9, and #10 all need to be discussed, and she does not feel they would be in favor of these Waivers. She stated they do not have a problem with Waiver #11.

Mr. Eisold stated with regard to Waiver #8 with regard to the street trees, he believes that they were looking for the Township to accept the existing trees since there are substantial trees along the frontage. Ms. Tyler stated in that case the Ordinance would not apply if they already have the required number of trees in place. Mr. Eisold stated a Waiver is given if the existing condition does not warrant new street trees. Ms. Tyler stated she does not feel that would be considered a Waiver, rather it would be that they comply. Mr. Hintenlang stated Boucher & James did inspect the trees on site which is why Mr. Eisold is recommending that Waiver. Ms. Tyler stated she feels this would not be a Waiver, rather they would be in compliance. Mr. Eisold agreed that this is a gray area.

Mr. Wilson stated the Ordinance specifically states any property in a Subdivision within 1500' cannot do a private septic system, and they must tie into a public sewer system. He stated if this requires them to get Easements, the way he was required to get Easements to cross Farmland Preservation, they must do the same and get an Easement and acquire property from Farmland Preservation. He stated the Ordinance does not say you must be adjacent to a Municipal sewer system, it says if you are within 1500' you must tie into the public sewer system. Ms. Tyler asked Mr. Truelove to review this to see if there is a requirement for them to tie into a system other than Mr. Wilson's system. Ms. Reiss also asked that he look into the Ordinances or laws of private sewer system that are not dedicated to the Township. She stated she would like to know why this is not dedicated. Mr. Benedetto stated Mr. Fedorchak had indicated that this is a fairly unusual situation especially for this length of time.

Mr. Sacco stated he feels they should get an answer from Mr. Wilson as to why he has not dedicated his system. Ms. Tyler stated they have asked him that, but he has not answered. Mr. Wilson stated there were six lots remaining after the lots where his daughter lives. He stated of those six, two are already sold to Triumph Building Group, and they have the option to buy the other four lots. He stated that timeframe will probably be within eighteen months. Ms. Reiss stated he should just consider the cost of the sewer into the cost of the lots sold just as is done at every other development. Mr. Wilson stated when he figured the cost in, it was divided amongst ten lots. He stated the adjoining property owner at 1578 did pay to tie into his line, and he was not part of his Subdivision. Ms. Reiss stated if Mr. Wilson is selling his

other properties now, he should determine the cost of the sewer and include it into the price of his property. Mr. Wilson stated what Ms. Reiss is asking is for the six remaining lot owners to pay for two of those connections to be given free to Mr. Kaplan, and that is not fair. Ms. Reiss stated Mr. Kaplan will have to pay to get the pipes down to his property.

Mr. Sacco agreed to provide an Extension.

Mr. Truelove stated the Board met in Executive Session beginning at 6:45 p.m. and informational items were discussed including traffic issues.

ZONING HEARING BOARD MATTER

With regard to the Teresa and Doug Traub Variance request for the property at 320 Richard Road in order to permit construction of a patio paver and sidewalk resulting in a greater than permitted impervious surface, it was agreed to leave the matter to the Zoning Hearing Board.

SUPERVISORS REPORTS

Ms. Tyler stated with regard to the Electricity Reliability Commission she will be sending Mr. Truelove an e-mail about a follow-up meeting with Mr. Dorand. She stated she and Mr. Fedorchak are going to a PECO reliability Municipal meeting that they were invited to, and she will then provide an update. Ms. Tyler stated the Historic Commission uncovered an issue with regard to the Delaware Bridge project; and one of the homes that was purchased by the Bridge Commission is a historic-designated structure, and they are going to send a letter to the Bridge Commission and inform them that it is on the National Register and request that they make an effort to preserve the structure and incorporate it into the design with the full understanding that they may not agree to do so.

Ms. Reiss stated the Farmland Preservation Corporation needs to work with the Bridge people since they want to use part of the farmland for storage while they are doing their building, and the Farmland Preservation Corporation is concerned that it will disrupt the farming. She stated they are going to try to set up a meeting with Farmland, Mr. Fedorchak, and some Board members possibly during Executive Session to try to work something out that will work for the Bridge people and the farm people or see if there is another location that they could use. Ms. Reiss stated Special Events is working on Community Pride Day, and she added any community group interested should contact herself or Ms. Liney.

Mr. Lewis stated the Township maps have been completed at no tax dollar expense as it was provided with advertiser subsidy, and they are now available. He stated the EAC is planning for a May 6 electronics recycling event with the location to be finalized shortly. He stated they are discussing having a shredding event at the same time. Mr. Lewis stated at their meeting the EAC reviewed the Township Tree Ordinance, and they may have this on a future Agenda, and they also discussed the LEED equivalency requirements which were discussed earlier as well as the Elcon Phase II Application. Mr. Lewis stated on May 2 there will be a Bridal Expo at Makefield Highlands at 7 p.m. at no expense, and there is a chance to win a free honeymoon. He stated there will be many vendors on site. Ms. Reiss stated Makefield Highlands is also an excellent site for Bar and Bat Mitzvahs. Mr. Lewis stated the Zoning Hearing Board met and welcomed Mr. Majewski as the new Director of Planning and Zoning and resolved two cases.

Mr. Benedetto stated the Planning Commission met and discussion some recommendations they are going to make on the O/R District as they were tasked to do. He stated they are looking at Ordinances from other Townships, and they are looking at some additional uses for O/R that Mr. Majewski put together.

APPROVAL OF AWARD OF BID FOR ROAD MATERIALS FOR 2017-2018

Mr. Fedorchak read the recommendations for award of Bids for road materials for 2017-2018. He noted these were the low Bidders.

Mr. Lewis moved, Ms. Reiss seconded and it was unanimously carried to award the Bids for road materials for 2017-2018 as outlined by the Township Manager.

There being no further business, Ms. Tyler moved, Mr. Benedetto seconded and it was unanimously carried to adjourn the meeting at 10:50 p.m.

Respectfully Submitted,

John B. Lewis, Secretary