

TOWNSHIP OF LOWER MAKEFIELD  
BOARD OF SUPERVISORS  
MINUTES – FEBRUARY 6, 2019

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held in the Municipal Building on February 6, 2019. Mr. Grenier called the meeting to order at 7:35 p.m. and called the Roll. Mr. Grenier stated he received a note from the Citizens Traffic Commission Chair advising that they recently lost a long-time member of the Commission, Richard Davino; and a moment of silence was held in his memory.

Those present:

Board of Supervisors: Daniel Grenier, Chair  
Frederic K. Weiss, Vice Chair  
Kristin Tyler, Secretary  
Suzanne Blundi, Treasurer  
John B. Lewis, Supervisor

Others: Kurt Ferguson, Township Manager  
David Truelove, Township Solicitor  
Andrew Pockl, Township Engineer

Absent: Kenneth Coluzzi, Chief of Police

#### ENVIRONMENTAL STEWARDSHIP AWARD

Mr. Grenier announced that the recipient of the 2018 Environmental Stewardship Award is the Friends of Five Mile Woods an organization of volunteers which has been in existence almost forty years. He stated the primary effort of the Friends is their monthly volunteer work days held on the second Saturday of the month from March through November at the Five Mile Woods. They also consider education an important component of their public service, and they host several public education events at the Preserve and in the community. A plaque was presented to the Friends members present this evening.

#### COMMUNITY ANNOUNCEMENTS

Mr. Grenier stated the EAC Lecture Series will be held February 16 at 10 a.m. at the Community Center. It will be a panel discussion on stream bank protection, detention basins, and homeowner lawn maintenance/landscaping to improve stormwater management.

Mr. Grenier stated that on March 9 they will hold the Annual Community Center Open House from 10 to 2 with different events and items on display.

#### PUBLIC COMMENTS

Mr. Harold Kupersmit, 612 B Wren Song Road, stated someone came into his neighborhood marking up the grass; and he asked if they are preparing to put pedestals on his property. Mr. Grenier stated that is called a utility mark out, and it could be for pedestals, underground or above-ground utilities, or some other landscaping project going on in the neighborhood. Mr. Grenier stated there is a list on the Township Website from Comcast of properties where they will be putting pedestals. Mr. Ferguson stated they try to keep the list updated on the Township Website as they get it from Comcast. He stated for those without Internet access, they can call the Public Works Department. Mr. Ferguson stated the process they are following is that when they get notice from Comcast, Comcast marks the property, and the Township then checks to make sure it is not a safety issue at the proposed location. Mr. Grenier stated the February list is now posted on the Township Website. Mr. Kupersmit asked if they have a legal right to post a pedestal on his property, and Mr. Ferguson stated it would be in the right-of-way. He stated the area between the curb and the sidewalk in the grassy area is the right-of-way that they would have access to. Mr. Kupersmit stated he is filing suit against Verizon on another issue; and if it is Verizon, he will add the pedestal issue to his complaint.

Mr. Kupersmit asked if the Board of Supervisors has done anything with the Act 537. Mr. Grenier stated they have a few different 537 Plans that have been approved by the State which are associated with the sewer system. Mr. Ferguson stated the 537 Plan has been approved, and the Township has budgeted this year consistent with that Plan upgrading two pump stations that are underway as well as an ongoing maintenance program televising lines, etc. He stated they also have another Ordinance they will be discussing in the future consistent with the 537 Plan, so it is being implemented. Mr. Kupersmit asked if they are planning on formulating a new waste treatment plant facility. He stated the Board has not considered the “super bugs,” which he feels is a serious problem.

Mr. Kupersmit stated on August 11, 2014 Mr. Steve Santarsiero, who was then the Representative for Lower Makefield Township, had him arrested. Mr. Kupersmit stated he was on probation at that time, and it was a threat to him to “get more jail time.” Mr. Kupersmit stated he understands that Mr. Santarsiero has an injunction against him that prohibits him from having any contact with him or his staff. Mr. Kupersmit stated the Board of Supervisors should inform Mr. Santarsiero that he should either lift the injunction or he will move to have him removed from office.

Mr. Jack Matthews, 10 Williams Lane, stated he looked at the recycling yard schedule, and he feels two Saturdays in a year is very unreasonable. He stated he feels it should be one Saturday a month. Mr. Grenier stated the most recent schedule shows that there will be four Saturdays and three Mondays between May and November. Mr. Matthews stated he contacted his trash hauler, and the branches they will take are small for the area where he lives which is an older community. He stated they also take the material to the incinerator, and they do not recycle. Mr. Matthews stated he feels the yard should be open a little bit more. He stated the Township always seems to have money for athletic fields, Railroad crossings, and a Dog Park. He stated he feels if the cost is \$40,000 a year for the recycling program, they should be able to adjust the schedule to help the residents.

Mr. Matthews stated he received a flyer that there is going to be a bicycle ride on all of the bike paths which equals approximately 28 miles. He stated they need to subtract at least two and a half miles because along Big Oak Road at Derbyshire there has been a large sink hole there since last summer as well as four other sink holes from there to the Five Mile Woods. He stated at Stony Hill Road the branches are hanging over, and bikers will be hit on the head. He stated there is also bamboo that is higher than the utility lines. He stated he felt that there was a Bamboo Ordinance. He stated no one is maintaining the paths we have now as there is grass growing through all of them. He stated before spending money for additional bike paths, we should maintain what we have. Mr. Ferguson stated he and the Public Works Director have had discussions about this, and they are putting together a trail maintenance plan regarding taking care of what we have. He stated they will add a specific trail maintenance line item in the 2020 Budget where they will have a plan to crack seal and do a variety of different things. Mr. Matthews stated he is no longer as proud as he was in the past to live in Lower Makefield with the way things are being maintained. Mr. Matthews stated they always want to build things, but we are not maintaining what we already have; and that should be the first priority before they start any other projects. Mr. Ferguson stated they will be spending \$10,000 this year on trail maintenance, and they will continue to do this in subsequent years.

Mr. Matthews stated he feels by the end of next year they will find that no one will be using the recycling yard because it is not open enough for the residents. He stated he feels that next the Township will not have the leaf collection. Mr. Ferguson stated there is a DEP Grant right now that includes programs like the leaf program, and the Township intends to make application for five leaf trailers which cost \$76,000 a piece. He stated there is a 10% match required by the Township. He stated the Grant Application in total will be approximately \$370,000, and the Township costs will be \$60,000. Mr. Ferguson stated the original plan was to put one trailer in the 2020 Budget at a cost of \$76,000.

He stated now they could replace half the fleet of leaf trailers. He stated the Township has not bought a new one in over a decade, and the most recent one bought was a used one in 2010. Mr. Ferguson stated he feels this shows a commitment to the leaf program by having adequate equipment. He stated this will be on the February 20 Agenda. Mr. Matthews stated that is good to hear.

Mr. Matthews stated it was indicated that there were environmental issues at the recycling yard. He stated on Route 1 toward Trenton, there are two very large mulch processing plants, which are right along the Delaware Canal; and all they had to do was put up a silt fence. Mr. Matthews stated at the Township's recycling yard, there are only wetlands. Mr. Ferguson stated that was just one of many issues. He stated the biggest issue they face has to do with the fact that there are just twelve Public Works employees, and this is the same number the Township had when there were just 70 miles of Township roads, and now there are 130 miles of road. He stated while people had questioned whether two staff people were dedicated to the recycling yard in the past, the fact is that moving forward we will need to permanently have two staff people at a minimum dedicated to the yard. He stated it is not just covering the cost but the ability to offset the loss of two staff people controlling that program. He stated this would need to be done regardless of a fence being around the site or anything else. He stated even if they were to charge fees for use of the yard, they still need two staff people to check the cards and what is being dumped at the recycle yard to meet the various requirements we have moving forward. He stated there are other challenges having to do with costs and environmental concerns as well. He stated it was important to people that there be a spring and fall clean up, and they were offering that. He stated he was then charged to fill in some additional days, which they did. He stated they will have at least two people and possibly three managing the site one day a month from April to October. He stated up until a few years ago, it was only opened once a month all year long. Mr. Matthews stated that worked fine. Mr. Ferguson stated at this point it will be open seven days this year. He stated the Board has also asked him to look at possibilities moving forward whether it is just seven days or if they can add some additional days. He stated the primary question will be staffing.

Mr. Matthews stated he feels this is moving in the right direction although some additional days would be helpful. Mr. Matthews asked why they have to have two people at the recycling yard. Mr. Grenier advised Mr. Matthews that he had been speaking for approximately ten minutes where there is a three minute limit adding they have discussed this issue in detail previously and they will continue to do so., Mr. Matthews asked if any of the Board members would like to come to his home to discuss this further, and Mr. Grenier stated Mr. Matthews is welcome to reach out individually to any Supervisor.

Ms. Tyler stated she understands the issues being faced such as the staffing; however, she feels the community would be better served if they did one Saturday a month as opposed to the proposed schedule. She stated they would then not be taking Public Works employees from their Public Works functions Monday to Friday. She stated she recognizes that they would have to pay overtime for Saturday. She stated they should calculate what the cost for those twelve Saturdays would be. She stated that would make more sense than what is proposed since having it open on Monday will not help too many people. She stated she feels there has been information provided by many of the residents that the trash haulers are not handling this sufficiently.

Ms. Tyler stated she knows that her trash hauler will not take a 6" diameter branch. Mr. Grenier stated the Township is not supposed to be taking that size branch either which is the problem. Dr. Weiss stated that anyone dropping off a branch greater than 2" in diameter is doing so illegally. He added that anyone that is dropping off anything other than yard waste is also dumping illegally. Dr. Weiss stated he has a half acre treed lot, and his home is over seventy years old. He stated he gets a lot of yard waste, and he feels it is his responsibility to take care of his own yard. He stated he pays \$100 in the spring and \$300 in the fall to have a landscaper remove any branches. He stated if the Township could afford it, they could ask for something like once a month as they did in the past. He stated being open 300 days is out of the question because we cannot afford it, and Mr. Matthews stated he agrees with that. Dr. Weiss stated maybe in the future if things are different, they can open it up more. Mr. Matthews stated he takes care of his own yard but has not found anyone to do it for the price Dr. Weiss is saying.

#### APPROVAL OF MINUTES OF JANUARY 16, 2019

Ms. Tyler moved and Ms. Blundi seconded to approve the Minutes of January 16, 2019 as written. Motion carried with Mr. Lewis and Dr. Weiss abstained.

#### ENGINEER'S REPORT

##### Approval of Oxford Valley Road Conservation Easement and Preparation of Application to Bucks County Planning Commission

Ms. Blundi moved and Dr. Weiss seconded to approve the Revised Plan for the proposed Conservation Easement as delineated in the December 13, 2018 survey document identified as the Township Railroad Parcel Conservation Easement Exhibit prepared by Remington & Vernick Engineers for submission

to the Bucks County Planning Commission for approval as the Final version of the Conservation Easement under and pursuant to the applicable Bucks County Open Space Program and to be subject to the necessary Conditions and Covenants to preserve the delineated area permanently as open space.

There was a Plan of the Easement shown this evening. Mr. Grenier stated this was sometimes referred to as the “silt pile” area, and what they are doing tonight is going forward with a Motion to put a large portion of the parcel under a conservation Easement through the Bucks County Planning Commission Program.

Mr. Pockl showed the property which is located immediately behind the Township complex. He stated in the southwest corner there is a portion of the Lot that is being used by the Township Public Works Department for a storage yard. He stated that the entire acreage of the property is approximately 30 acres, and this would be a Conservation Easement area of just over 26 acres; and it encompasses everything from Oxford Valley Road down to approximately 350’ from the edge of the property line behind the Township’s complex. He stated there is a Keystone Water Company parcel that is 270’ by 270’, and it would not encompass that. Mr. Pockl stated there are also several water line easements going to the water company parcel. Mr. Pockl stated the area reserved for Township use, not including the Water Company parcel, is just under three acres.

Mr. Grenier stated that is in addition to the existing Township yard, and Mr. Pockl stated the existing yard is just off the Plan being shown. Mr. Grenier stated the existing yard is approximately two to two and a half acres, and Mr. Pockl stated he believes that is correct. Mr. Grenier stated the Township would therefore have the two and a half acres plus the three acres plus potentially the one and two-thirds of an acre from the Water Company. Mr. Pockl stated within that Water Company parcel there are underground utilities that might limit the usage of that property.

Ms. Tyler stated as she discussed previously when she tried to convince her fellow Board members unsuccessfully, while she is in favor of conserving the land and making sure for the neighbors across the street that there would be a 600’ buffer from the road, by overreaching all the way back to where it abuts the current Township complex, we will be restricting ourselves from using that property, and the Township will no longer be able to expand. Ms. Tyler stated the Township bought this property, which was contiguous to Township property, for Township purposes such as expanding Public Works, putting up a garage, building a Police Department, etc. She stated anything the Township would have wanted to do will no longer be allowed. She stated if there were a smaller Conservation Easement, we would achieve the goal of conservation and make the land undevelopable by a developer, but we would not be tying the hands of future Boards and expansion for Township use with land contiguous to the Township property.

Mr. Grenier stated if they include the Keystone Water Company parcel it would be above seven and two-thirds acres that the Township would have the potential option to look at for development. Ms. Tyler asked how they could include the Water Company parcel; and Mr. Grenier stated it would be six acres without it which is approximately half the size of the entire Township complex which includes the Library, the Municipal Building, the parking lots, and the ball fields. He stated there is still room to do something.

Ms. Tyler asked if any of the carve out that is not to be included in the Easement would be usable by the Township; and Mr. Pockl stated there is an area that would be available to the Township. He showed on the Plan the areas that could be used although they may have to Waive setback requirements in certain areas. He stated he feels approximately two acres would be available to the Township.

Ms. Blundi stated she is pleased that they have reached this compromise. She stated when she first saw the Easement, it was not what she had anticipated. She stated this issue is one of the primary reasons that she had asked to be considered to fill Ms. Reiss' seat when Ms. Reis moved onto the County. Ms. Blundi stated she remembers hearing Ms. Reiss and the residents speak passionately about the nature of this parcel of land, and she is pleased that they are able to move forward on protecting so much of it.

Ms. Judi Reiss, 969 Princess Drive, stated Grace Godshalk was the first woman Supervisor in Lower Makefield Township, and she became a Supervisor to protect the property. She stated if there is a way to have this designated in her memory, she would appreciate it. Ms. Reiss asked if it is possible to have a Deed Restriction so that whatever is developed will not "upset" the natural habitat. She stated there are very few places left for our wildlife.

Mr. Lewis asked if there could be a Deed Restriction placed for Municipal purposes with limits. He stated the prior proposal protected the entire parcel. Ms. Tyler agreed that it did with the Deed Restrictions. Mr. Lewis stated he would be comfortable with a Conservation Easement on the whole parcel, but at least a Deed Restriction on the remaining seven acres. Mr. Truelove stated they could look into that.

Ms. Tyler stated the Township could take eight more acres closer to the Township and leave it out of the Conservation Easement and conserve the rest and Deed Restrict the back land so that it could not be developed but it could be used for future Municipal purposes. She stated it would foreclose any issue of development of the land, which was the purpose of why they were trying to lock this land down, but would not tie the hands of the Township.

Ms. Blundi stated she felt that the compromise that they had reached was to preserve the additional land and protect the different species. She stated in talking to the Township staff she recognized that they do need some places to expand, and she felt they had reached that compromise with this Plan.

Mr. Zachary Rubin, 1661 Covington Road, asked if the Church in the area is shown on the drawing, and Mr. Pockl showed the location of the Church. Mr. Rubin asked if this Conservation Easement goes through, is it possible that the Township could sell the parcel to an entity such as the Church that would respect the Conservation Easement. Mr. Truelove stated any entity that would buy it would be subject to the Conservation Easement. Mr. Rubin stated if the Church bought the property with the Conservation Easement, they could expand their impervious surface since they could include the Conservation Easement in their property. Mr. Truelove stated the County restrictions would not allow for that. Mr. Rubin stated they would not be putting any impervious surface on that land, but they could include that land in their property which would increase the permitted ratio. Mr. Truelove stated he would have to look into that. Mr. Rubin stated he believes that is what the Church had proposed in the past. He stated the proposal was that the Township would sell the property to the Church, which would Deed Restrict that open space, but it would entitle them to expand their parking lot. Mr. Rubin stated it is possible that could be done in the future with this type of Easement. Mr. Truelove stated he feels there would be legal issues with that. Mr. Grenier stated they would also have to change the Lot lines, and Mr. Truelove agreed. Mr. Pockl stated the Township would have the ability to review those plans and make comments. Mr. Rubin stated that would have happened before when the Township owned the property, and the same questions arose. Mr. Truelove stated he agrees that what Mr. Rubin is discussing is theoretically possible.

Mr. Lewis moved to amend the Motion to name the Easement in honor of Supervisor Grace Godshalk and seek a Deed Restriction on the remaining parts of the parcel that are not currently protected, restricted to Municipal use and DEP-approved use. There was no Second.

Ms. Blundi stated they had already named the Easement after the young woman who brought this to our attention, Katie Burke; and this is part of what was done when Mr. Lewis was Chair. Ms. Blundi stated this is also “startling” now since they worked so long on coming up with the compromise, and she was not prepared to now talk about “moving backwards” and tying the Township’s hands on the piece of the land that we had said we would hold for the Township’s use. Mr. Lewis stated this would not tie the Township’s hands but it does mean that they could not sell the land to an entity to use it for non-Municipal purposes. He stated it would protect the entire parcel from non-Municipal purposes. He stated what they really want to do is to protect the entire silt pile.

Mr. Grenier stated the issue he has is if they develop anything in the area that is not part of the Conservation Easement given some of the resources that are back there no matter what we do, we will still have to get environmental approvals. He stated unless they would do a Conservation Easement over everything, he does not feel that there is any way to guarantee that as a Municipal use since the only Municipal use they would end up using it for would be for open space. He stated when he looks at the map, the brown area in the corner actually goes into part of the twenty-nine acres; and if we did that, we would have to technically pull the Township yard out of that, maybe re-vegetate it, and abandon part of our active yard which he does not feel they want to do.

Mr. Lewis stated all he is saying is that they would be limiting it to Municipal use. He stated the Deed Restriction is designed so that part of the parcel cannot be sold to a third party. Mr. Lewis stated they want to make sure they are protecting the entire silt pile. He added the strategy that was previously of issue was the thought that a more restricted Conservation Easement was not a significant part of the parcel; and he feels that they are now at a point where they are comfortable with where the Conservation Easement is, but they could also protect the entire parcel. Mr. Lewis stated they would be limiting it to Municipal purposes. He stated they do not know what the 1.7 acres could be used for, and there are things that it could be sold for which are non-Municipal purposes. He stated they just went through a process in the Township where they had situations where prior Boards made decisions to sell open space or to offer things that caused many in the community concern, and he feels in response they need to be extra careful going forward.

Mr. Grenier stated while he agrees, there had been a comment made previously about making sure that it would not be susceptible to anything that required DEP intervention. He stated any Municipal use that we have would ultimately result in clearing some land, and the Township would not be able to do that; however, limiting it to Municipal use was the goal of what they were doing.

Mr. Lewis moved to amend the Motion to state that the remaining portion of the parcel be Deed Restricted to Municipal purposes generally. There was no Second.

Ms. Blundi stated it is difficult for her to now be asked to consider something that is very different from what they had been talking about. She asked that they take time to consider this Amendment and bring it up as a new Motion in the future.

Mr. Lewis stated one of the benefits of the prior proposal was that everything that was considered part of the silt pile was protected in some manner, and all he is suggesting is that we do the same here.

Mr. Grenier stated they could vote to direct the solicitor to move ahead with the Conservation Easement Application; and whenever he is done with that, he would present it back to the Board. Mr. Lewis stated they could draft a Deed Restriction and both could be considered at that time.

Mr. Lewis moved to have the solicitor draft a Deed Restriction for the remaining portion of the parcel to be considered once the Bucks County Planning Commission has completed review and that could receive an up or down vote at that time. Mr. Grenier stated they could consider this as a second Motion.

Mr. Tony Kehoe, 476 Liberty Drive, thanked the Board for this, and stated he would be in favor of having this be two separate Motions. He stated they got into “this mess” because the condemnation letter explicitly stated “for condemning the land for Municipal purposes,” and he gets “shaky” when he hears “Municipal purposes.”

Mr. Luke Butler, 2321 Weinmann Way, stated it seems that what Mr. Lewis is saying is that they would put some part of what is on the map not under Conservation Easement, under a Deed Restriction. He asked Mr. Lewis if he is talking about the part of the parcel that is not in gray on the Plan, and Mr. Lewis stated his proposal is that everything that is seen that is in gray would remain as a Conservation Easement. He stated a Conservation Easement is the most restrictive that can be placed on a parcel of property. He stated that would mean that a portion of the silt pile area would be unprotected in any way. He stated it could also be sold to a third party that is not a Municipality, so he is stating that he would like to provide a Deed Restriction so that parcel could only be used for Municipal purposes. Mr. Lewis stated last year the situation was that they had a little less for the Conservation Easement, and a little more that was Deed Restricted. He stated what is now being proposed is more in Conservation Easement and they would Deed Restrict the other portion. He stated the goal is to protect the entire silt pile in some manner.

Mr. Butler stated he has discussed this property a number of times, and he and his wife have identified a significant amount of wildlife that inhabit this area at different times of the year. He noted the area that shows the trail which is walkable in all seasons. He stated where the Conservation Easement ends in the southwest corner it provides access to the existing nature trail that terminates at the Library.

Original Motion carried with Ms. Tyler opposed.

Mr. Lewis moved to develop a draft Deed Restriction on the remaining portion of the parcel. There was no Second.

Approve Pay Application No. 2 for Contract No. 1 for the 2018 Road Program

Mr. Pockl stated this is the reconstruction of Oxford Valley Road in the amount of \$29,700.15.

Mr. Lewis moved, Dr. Weiss seconded and it was unanimously carried to approve Pay Application No. 2 for Contract No. 1 for the 2018 Road Program.

Approve Pay Application No. 2 for Contract No. 2 for the 2018 Road Program

Mr. Pockl stated this is the milling and overlay of the Township roads for the 2018 Road Program in the amount of \$119,319.51.

Mr. Lewis moved, Ms. Tyler seconded and it was unanimously carried to approve Pay Application No. 2 for Contract No. 2 for the 2018 Road Program.

Approve Bid for the Main Pool Gutter Repairs Project

Mr. Pockl stated they put out for Bid the main pool gutter repairs project, and they received four Bids. He stated the low Bid was from Premier Pool Renovations Inc. in the amount of \$392,645 for the Base Bid. He stated that involves removing the existing concrete gutter around the perimeter of the main pool and replacing it with a stainless steel gutter and also completing concrete repairs within the pool itself and addressing and constructing new expansion joints within the pool. Mr. Pockl stated Alternate Bid #2 is for replacing of the pool water supply and drainage piping from the pool to the surge tank, and the low Bid for that was also Premier Pool Renovations in the amount of \$17,550. He stated they are recommending award in the total amount for the Base Bid and Alternate Bid #2 in the amount of \$410,195.

Mr. Lewis moved and Dr. Weiss seconded to award the Base Bid and Alternate Bid #2 to Premier Pool Renovations in the amount of \$410,195.

Ms. Tyler asked about the timing submitted on the Bid. Mr. Pockl stated they had in the specifications that the Township would authorize an award tonight, and there is a five-day Responsible Contractor period for review. Then they would issue a Notice of Intent which would authorize the contractor to sign the Contract and begin the work to order materials and talk to the manufacturer of the gutter system and allow them to start fabricating the gutter system. Mr. Ferguson stated they would expect that to be delivered no later than March 31 which would give a three to four

week construction time which would put us at the end of April. Mr. Pockl stated May 9 would be the end of the Contract. Mr. Ferguson stated the contractor is aware of those deadlines. He stated in the Bid specs, there were two contractors who had built penalties into their price since they felt they could not do it in time. He stated that is why two of the Bids are higher. Mr. Ferguson stated those with the lower Bids were both familiar with the timeframe and had done pool projects so that they knew that most pools have a Memorial Day opening, and they were comfortable with the timing. Mr. Ferguson stated if it would rain every day and they physically could not get out because of that, that would be different; however, they were comfortable with the timeframe and their price was lower since they were not anticipating having to build in a penalty into their price. He stated they understand that there is a penalty if they cannot do it in time.

Mr. Ferguson stated they had budgeted \$465,000 for the project. He stated one of the Bids that was added, which had been discussed previously, was to paint the Pool; however, the Bid for the painting came in significantly more than they paid in previous years, and they are not recommending approval of the painting as part of this. He stated they will re-Bid that back out. Mr. Ferguson stated in previous years to paint the pools, they spent between \$25,000 to \$30,000; and the low Bid to paint the pools was \$60,000. Mr. Ferguson stated they already have the specs for the painting since it was included in this, and they will put it back out to see if we can get a better price which he feels they will.

Ms. Tyler asked if the entity that normally paints our pools Bid on this, and Mr. Ferguson stated they did. Mr. Pockl stated they were Bid as a sub-contractor to the contractor who placed the Bid, and he suspects that they want the work themselves.

Motion carried unanimously.

Approve Authorization to Proceed with 2019 Road Program as Outlined by Township Engineer

Mr. Pockl stated they looked at the current Road Program and the Budget. He stated they considered a number of roadways which they looked at to evaluate the condition of the roadways, and they narrowed it down to a number of roads they are proposing for the 2019 Road Program. He stated those roads are: Quarry Road from the I-95 overpass to Lindenhurst Road, Creamery Road from Yardley-Newtown Road to just past Dove Trail Lane, Ginko Lane, and Plowshare Road which would be in the Base Bid. He stated they also have Alternate Bids if they get favorable pricing, and they would be either Black Rock Road from River Road up to Ardsley Road or Rose Hollow, and that is split into two separate sections.

Mr. Ferguson stated Creamery Road includes a drainage component being added as part of the paving, and Mr. Pockl agreed. Mr. Pockl stated they would not be adding curbs. He stated Creamery Road sits lower than the adjacent ground. He stated they would propose to install a roadside drainage swale and also have an under drain because the soils are poor and tend to hold water longer than other soils. He stated the under drain would help drain any groundwater that would get into the basin and create problems in the roadway. He stated all of that work is incorporated into this project.

Mr. Pockl stated there was a request by Supervisor Blundi to add roadway reflectors, and they are implementing them in Quarry Road, Creamery Road, and possibly Black Rock Road as well.

Mr. Ferguson stated once they are done with this, they will be working with the staff and Mr. Pockl to create an updated shorter term, three-year or so, road paving strategy recognizing that on a year-to-year basis roads other things may happen. He stated he feels a three-year paving plan would give a reasonable expectation as to where we are going. He stated going farther out from that is problematic. He stated the paving this year is limited to the liquid fuels funds adding we have some in Capital projects. He stated eventually they will have to have a discussion about what we need to strive for each year to reasonably get to roads on a twenty-year average, and they are going to have to find a way to do more roads.

Mr. Lewis stated on roads that are not yet ready to be paved, they sometimes have  $\frac{3}{4}$ " to 1" cracks that badly need crack sealing. He stated as they go through the three-year plan, they should know the grade of all the roads so that they can track whether roads are moving into poor grades quicker based on who paved them previously or how they were done. He stated he feels there should also be a plan to seal cracks in roads throughout the Township. Mr. Ferguson stated there are six road employees, and last year they had a plan to crack seal, and there were fifty to sixty inlets that needed immediate repair and that became the priority because they became traffic issues. He stated rating every road in the Township and doing an analysis will involve a significant cost. He stated he feels they can manage doing a three to five year Plan internally along with some of Mr. Pockl's time. Mr. Ferguson stated he will also be speaking with the Public Works Director on a maintenance strategy. He stated they did have a plan last year to do crack sealing at a variety of locations; but because of the size of the staff and other things that happened, it was difficult. He stated they are going to have a maintenance goal in terms of roads they want to get to and budget accordingly to be able to do that moving forward.

Mr. Lewis asked if there is an opportunity to include crack sealing in the proposal. Mr. Pockl stated he has seen road programs where they incorporate crack sealing within the road program to extend the life of the pavement, and this is something that could be considered going forward. Mr. Lewis asked if that could be a Bid Alternate. Mr. Pockl stated it would be different roads. Mr. Lewis asked if there is a list of roads that we know need to be crack sealed. Mr. Ferguson stated while he does not have that with him to discuss this evening, Mr. Hucklebridge has been working on what the goal would be this year; however, it is a matter of having the physical capability and time to get it done a lot of which is weather dependent. He stated he has six employees, and they will be doing trail maintenance more aggressively this year, along with crack sealing, road improvements, etc. and they have to try to get everything done with a very small-scale staff. Mr. Lewis asked if the advice is not to include crack sealing in the Road Program for this year and just do it with Public Works. Mr. Ferguson stated that would be true for this year since they did not bid it out to be included in the Road Program. He stated alternatively they could include it as a Bid, but they would not be able to do the paving until much later in the year. Mr. Ferguson stated he feels they should be paving 6.5 miles of road a year, and the Liquid Fuels Budget allows them to pave 1.5 to 2.5 miles a year. He stated they would need to consider at what cost they are willing to sacrifice those dollars to other things. He stated they will have to evaluate this in the future to see where the money is best spent.

Mr. Lewis moved and Dr. Weiss seconded to approve authorization to proceed with the 2019 Road Program as outlined by the Township engineer.

Mr. Zachary Rubin stated the Covington Road bike path was repaved in 2018, and they did an overlay and decided that milling was not needed; and therefore that project came in under Budget, and there was a surplus of monies. He stated he had asked before that they take that money and continue the loop on Heacock Road so that they have a continuous bike path that is circular around Covington Road going out to Heacock. Mr. Ferguson stated that money is gone. He stated if the final costs come in less than was estimated, when they do the year-end projections that money gets rolled back into the fund balance whether it is in Liquid Fuels or the General Fund. He stated this year's Budget was based upon where they expected to end last year even if they were under. He stated that money is not sitting in a set-aside fund to be used separately. Mr. Rubin stated it is a minimal amount of money, and he is asking that it be included in the 2019 Program and that they finish the loop. Mr. Ferguson stated they have already bid the Program out at this point, and that was not an item for consideration this year.

Mr. Lewis stated he is in favor of increased bike paths throughout the community, and the question is how they would prioritize the improvement of the bike path at Covington Road versus other bike path improvements that are twenty years behind

where they should be. He stated he feels it would be better for the Park & Rec Board to indicate the ones that are the next highest in priority; and that would be a good time for Mr. Rubin to argue his case compared to other potential bike path projects. Mr. Grenier stated Mr. Lewis, as the Park & Rec Board liaison, should put that forward to Park & Rec. He stated the Park & Rec Board could help the Supervisors prioritize the bike path plan and the multi-use trail plan and put it in a future program.

Mr. Ferguson stated the trail paving is not a Liquid Fuels eligible expense. He stated in previous years when there was Bond money and other sources of money, they had a separate category and a couple \$100,000 was coming out of Capital Funds that allowed them to be more creative with what was included in the Road Program. He stated this year they are relegated to State money which has a variety of limitations on it that prohibit the Township from doing some of these things.

Mr. Rubin asked Mr. Ferguson if when a developer comes in and pays a fee-in-lieu of paving could that go toward bike paths. Mr. Ferguson stated there is a Park & Rec Fee-In-Lieu that has certain parameters, but he would have to look into that. He stated possibly they could negotiate something that would be outside of the Park & Rec Fee-In-Lieu where they would have more ability to use that as they choose; however, the Park & Rec Fee-In-Lieu would typically not be used for trails as typically that is used for open space. He stated he would have to see what the provision was in the original Legislation that was created probably twenty to twenty-five years ago.

Mr. Harold Kupersmit stated at Heather going south across the Railroad tracks that turns into Oxford Valley Road where there is an office park that road should be put on the list to be done next year. Mr. Kupersmit stated every meeting the Supervisors are proving his point that there is a lot of money in the Township, but they still do not have enough money to take care of all the anticipated needs. Mr. Kupersmit stated the Supervisors should thank the Supervisors from Yardley for repaving Main Street. Mr. Lewis stated that was a PennDOT project.

Motion carried unanimously.

#### MANAGER'S REPORT

#### Approve December, 2018 Interfund Transfers in the Amount of \$5,288,598.17

Ms. Blundi moved, Mr. Lewis seconded and it was unanimously carried to approve the December, 2018 Interfund Transfers in the amount of \$5,288,598.17.

Authorize Purchase of a 2018 JCB Skid Steer at a Total Net Cost of \$73,000

Mr. Ferguson stated this is for an outright purchase, and there will be no subsequent Motion coming in at a future meeting regarding financing. He stated this was part of the 2019 approved Budget in the Road Machinery Fund category.

Ms. Blundi moved, Ms. Tyler seconded and it was unanimously carried to authorize the purchase of a 2018 JCB Skid Steer at a total net cost of \$73,000.

Pennsylvania American Water Company Update

Mr. Ferguson stated he had a meeting late last week with Pennsylvania American Water to go over a variety of items. He stated they are coordinating projects and future paving, and they will be sharing information. Mr. Ferguson stated they advised him that they plan to come and meet with the Board of Supervisors. He stated the reports on the water issue that PAWC submitted are going through both PUC approval and DEP approval. Mr. Ferguson stated once they have that process completed, they intend to come to the Board of Supervisors. Mr. Ferguson stated he did raise up points that have come up before the Board which he felt could be part of their presentation before the Board which would include the notification system and the consideration that property owners could be credited something back understanding that everyone had to flush their systems out. Mr. Ferguson stated he is not sure when they will be coming to a meeting since they did not want to commit to a time and still be waiting for the PUC or DEP response. Mr. Ferguson stated he has direct contact and coordination weekly with representatives at PAWC, and they will provide weekly updates on the status; and once he knows when they will be coming to a Board meeting, he will make this known to the Board and the public.

Mr. Grenier asked if they discussed the open trench work they did on the northern end of Taylorsville south of the bridge. Mr. Ferguson stated he did not discuss any specific projects with them, and they spoke more about sharing information in advance so that the Township is not paving a road that the Water Company plans to rip up a year later. He stated he wanted there to be better coordination with the Water Company on projects and sharing information which he does not feel has happened in the past.

## SOLICITOR'S REPORT

### Defer Consideration of Adoption of Ordinance No. 417 Regulating Discharge of Gas, Grease, and Similar Substances

Mr. Truelove asked that this matter be deferred until February 20 as his office needs to have it advertised since they neglected to do so. He stated it will be advertised no later than this Friday so that will be able to be considered for adoption at the meeting on February 20.

Mr. Truelove stated the Board met in Executive Session commencing at 6:30 p.m. and items related to Real Estate, informational items, and litigation were discussed.

## PROJECT UPDATES

Mr. Ferguson stated the staff is underway with the Township property inventory, and they hope to have a summary of all the properties and will then continue with a more detailed analysis.

Mr. Ferguson stated Sandy Run Road is proceeding. He stated the intersection that is being planned has undergone a third-party review. He stated they also have the appraisal underway. They had the Army Corps come out and look at the site, and they made the determination that everything that was surveyed and laid out was accurate. Mr. Ferguson thanked Mr. Grenier for having the Army Corps come out so quickly.

Mr. Ferguson stated they have started staff and consultant coordination on Memorial Park and the multi-use trail, which is the trail around the fields.

Mr. Ferguson stated he is optimistic about the Woodside bike path Grant. He stated they made some minor changes to the proposal regarding the cost.

Mr. Mike Brody, 509 Brookbend Court, asked that when they look at Sandy Run they look to see if there is the possibility of turning the existing Sandy Run into some portion of a bike path to connect what will be the new multi-use trail to Yardley in a safer way than Edgewood or Oxford Valley Road under the bridge. Mr. Ferguson stated he would need to have a discussion with the Chief regarding the road as it currently sits that is closed off. He stated he knows that portion is not included on the multi-use trail plan. He stated while this could be discussed, it is not necessarily on the short list of fill ins of trails that he is aware of. He stated they would also need to consider that it is a road with an intersection that is closed that in part will

need to be ripped out at least at that intersection so that there is a clear idea as to where traffic is coming in and out of for the traveling public. Mr. Grenier stated he understands that pavement is to be taken out because they are adding a new road and that will create a lot more impervious surface, which would require greater stormwater management requirements. Mr. Ferguson stated while he is in favor of a trail connection at that location, regardless of impervious, if they were to create a multi-use trail the size that is traditional is approximately 10' to 12' wide.

Mr. Grenier stated he recalls from the discussions with Mr. Wursta, that we are just below the threshold for stormwater management requirements, and Mr. Ferguson agreed. Mr. Grenier stated if they were to add anything back, they would have to deal with that engineering.

Mr. Brody asked if they could not figure out a way to not leave it a rocky, unusable area. Ms. Tyler stated it could be a pocket park. Mr. Ferguson stated the Township would still have to buy it, and there are the condemnation costs. Mr. Truelove stated he believes the land would probably go back to the property owners, and it is not the Township's property. Ms. Tyler stated once they move the right-of-way, the property will probably revert back to the original owner.

#### ZONING HEARING BOARD MATTERS

With regard to the Munz Construction Variance requested for Mr. & Mrs. Moses for the property located at 691 Deer Path Lane in order to permit construction of a sunroom addition resulting in greater than permitted impervious, disturbance of floodplain and watercourse buffer, and greater than permitted steep slopes, Ms. Tyler moved, Ms. Blundi seconded and it was unanimously carried that the Solicitor should participate.

Mr. Truelove noted the Beth and Alfred Alon Variance request for the property located at 1491 Brookfield road in order to permit installation of a removable split rail fence to be located within a stormwater sewer easement. He stated this is a fairly common situation, and the Zoning Hearing Board has dealt with these in the past; and he would recommend that this be deferred to the Zoning Hearing Board.

Mr. Grenier stated a stormwater easement could just be a swale or there could be a stormwater pipe underneath. He asked Mr. Pockl if there is any existing infrastructure in the easement, and Mr. Pockl stated he has not looked at those Plans. Mr. Jim Majewski was present and stated there is a storm sewer pipe within that easement. He stated one of the typical Conditions that the Zoning Hearing Board would place on any grant of an Easement is that it would not adversely impact our facilities, pipes, or storm drainage; and that it does not block the flow of water within and through the Easement. He stated in the event that work needs to

be done by the Township, the property owner would be responsible for the removal and replacement of the section of fence required for the Township to gain access. Mr. Grenier asked what they would use for foundations for the rails, and asked if they can still put in concrete. Mr. Pockl stated it is a wood, split rail fence. Mr. Majewski stated one of the future Ordinance Amendments to be considered is to allow this subject to certain Conditions.

It was agreed to leave this matter to the Zoning Hearing Board.

With regard to the William Colflesh Variance request for the property located at 1250 Dickinson Drive in order to permit construction of a shed resulting in greater than permitted impervious surface, it was agreed to leave this matter to the Zoning Hearing Board.

#### APPROVAL OF OCTAGON CENTER PHASE II FINAL PLAN DAYCARE AND OFFICE

Mr. Edward Murphy, attorney, was present and stated this project started two and a half years ago when they submitted a Sketch Plan in May, 2016 to modify the originally-approved Plan. He stated since then they have had eight Public appearances before various Boards and Commissions in the Township. He stated the first was in November, 2016 when they reviewed the initial Sketch with the Planning Commission. He stated they had five other meetings with the Planning Commission since then, one with the Zoning Hearing Board, and this is the third meeting before the Board of Supervisors.

Mr. Murphy stated in May of 2016 they proposed to modify the original approved Plan that was approved in 2010, which provided for three Office pad sites on the property. He stated one of those pad sites has been developed for Lower Bucks Pediatrics. He stated two and a half years ago they proposed that the other Office pad sites be replaced by a day care and a Dunkin' Donuts. Mr. Murphy stated the bulk of the discussions over the past two and a half years had focused on internal circulation issues created by swapping the use, and principally the external impact on Big Oak Road and what level of traffic improvements would be required.

Mr. Murphy noted the Settlement Agreement which was adopted in May, 2006 between Matrix, the Township, and some other Party Interveners; and that Settlement Agreement in large measure dictated many aspects of how boundary road improvements to the larger Matrix project were going to be handled including corridor improvements along Big Oak Road. He stated it also talked about how Plans would be processed for Approval under the Agreement because at the time there were multiple phases of the project. He stated today many of those are built

or are under construction and are known as the Regency project. Mr. Murphy stated the project being discussed this evening was part of that overall Settlement Agreement, and is governed by the terms of that Agreement.

Mr. Murphy stated as time proceeded because of concerns expressed by the consultants about the impact of the Dunkin' Donuts portion of the project, ultimately it was determined about one year ago to remove the Dunkin' Donuts from the equation. He stated tonight what is before the Board is a Revised Plan that was presented last fall and only replaces the center office pad from the original three-pad project. He stated the Dunkin' Donuts is not part of this Application, and the original Office pad is still the placeholder for that spot. Mr. Murphy stated they propose to replace the center office pad next to the Pediatric use with a day care use.

Mr. Murphy stated this Plan has been reviewed multiple times by the consultants and most recently by the Planning Commission. It is the subject of various review letters that the Board has been provided. Mr. Murphy stated the issue of what additional fees, improvements, etc. that can be required of this Applicant based on the May, 2006 Settlement Agreement has been the subject of various opinions from his office, Mr. Truelove's office, and the prior solicitor who was involved in the original drafting and approval of the Settlement Agreement. Mr. Murphy stated tonight they are present to seek approval of the Plan recognizing that the day care use was always a part of the originally-approved list of uses under the Settlement Agreement; and the substitution of the day care use for the previously-approved Office use would not trigger the need for any other improvements along the corridor such as the traffic light which was the subject of a great deal of discussion over the last year or more.

Mr. Murphy stated what is before the Board is an Amended Plan that swaps out only the center of the three Office pads for a day care use and nothing more. Mr. Murphy stated he has been provided with a draft letter from Mr. Truelove's office with Conditions attached to an Approval, all of which are acceptable to the Applicant.

Mr. Truelove stated he agrees with what Mr. Murphy has presented especially in terms of the impact of the Settlement Agreement; and as Mr. Murphy has indicated by interpretation of the 2006 Settlement Agreement by Mr. Murphy's office, the prior solicitor, Jeffrey Garton who drafted the Settlement Agreement, and by Mr. Truelove's office which did an independent review they all agree that what is presented is a by-right Plan and no additional fees would be implicated. Mr. Truelove stated there was a discussion today by his office, Mr. Majewski, Mr. Pockl, and the Applicant's engineer about the Conditions set forth in the November 13, 2018 Remington & Vernick review letter which will be incorporated in the Approval tonight if the Board is so inclined.

Mr. Ferguson stated there has been a lot of discussion about the traffic light. He stated if Dunkin' Donuts were to re-emerge and that was to move forward as originally-presented with a drive through, that would then allow the Township to have discussions or require that they pay for a traffic light to be put in. Mr. Ferguson stated what kicks in the requirement for a traffic light is something going in that is not a use by right. He stated if the development goes in and it does not include a Dunkin' Donuts, and if there were a measurable problem with traffic the Township would have to look at a light. He stated he did ask for three years of incidents to be provided to him today, and at the spot where the entrance is at Old Oxford Valley Road and Big Oak, there has been one reportable accident there in the last three years. He stated at the intersection of Oxford Valley and Big Oak Road, there have been sixty-three total accidents, seven of which were reportable where there was someone injured or a car disabled and not just a "fender bender." Mr. Ferguson stated the staff and individual Supervisors have discussed that they may need to do something with the entire corridor. Mr. Ferguson stated at this point, what is proposed is a use by right; and as such under the Settlement Agreement, the day care would not be required to absorb the cost of a traffic light.

Mr. Grenier asked Mr. Ferguson if he had the opportunity to discuss the traffic accident numbers with TPD or the Traffic Safety Officer, and Mr. Ferguson stated the Traffic Safety Officer provided him with the numbers. Mr. Ferguson stated a number of years ago Middletown lowered their speed limit from 40 miles per hour to 35 miles an hour, and in August, 2016, the Lower Makefield Board of Supervisors lowered the speed limit from 40 to 35 miles an hour. He stated in 2016 there were twenty-six incidents, and they lowered the speed limit to 35, and in 2017 there were nineteen incidents. He stated in 2018 there were eighteen incidents. He stated they are not seeing an upward trajectory at the intersection. He stated as they move forward looking at the corridor, they will consider the intersection further.

Mr. Grenier stated the Plan proposed tonight for approval meets all the requirements of the Planning and Zoning laws and the Settlement Agreement. Mr. Truelove stated they meet all applicable Statutory, Regulatory, and Legal requirements.

Ms. Tyler moved and Dr. Weiss seconded to approve the Final Plans from Gilmore and Associates for the Octagon Center Phase II, Tax Map Parcel #20-03-003, Township Plan #660, for Plans from Gilmore and Associates, Inc. dated 11/8/17, last revised 10/4/2018 consisting of twenty-four sheets approved by the Board of Supervisors subject to the following Conditions:

- 1) Applicant shall comply with the Lower Makefield Township Subdivision and Land Development Ordinance, the Lower Makefield Township Zoning Ordinance, and all applicable State and Federal Ordinances, Statutes, and/or laws;
- 2) Where applicable receipt of all Permits, authorizations, and/or Approvals from all agencies with jurisdiction including but not limited to Pennsylvania Department of Environmental Protection and Bucks County Conservation District;
- 3) Compliance with Remington & Vernick Engineers 11/13/18 review letter and any supplements to said letter with the following notes that have been satisfied:
  - a) Comment A.1 has been satisfied as the loading zone is not part of the Application;
  - b) Comment 2 has been satisfied as the wetland delineation is not required as the project was approved as part of the Settlement Agreement;
  - c) A-5 The age-qualified standards for the C-3 District allow for 60% woodland disturbance and not 70% as was previously indicated;
  - d) Comment D-22 regarding building setbacks has also been satisfied because a Variance was obtained from the setback requirements
- 4) Compliance with TPD 11/9/18 review letter with the exceptions noted for the following reasons: Eliminating recommended traffic signalization as the current submitted Plan is a By-Right Development Application subject to the Terms and Conditions set forth in the May 18, 2006 Settlement Agreement between Matrix/AEW Acquisition LLC and Residents Against Matrix, Dana Weyrick, Bellemead Development Corporation, the Township of Lower Makefield, and any Addenda thereto;
- 5) Compliance with the 11/6/18 note from the Environmental Advisory Council and any supplements to same;

- 6) Compliance with Ebert Engineering, Inc. review letter dated 2/19/18 regarding sewer and related issues and any supplements to said letter;
- 7) Compliance with 10/28/18 review letter from James V. C. Yates, Fire Protection consultant and any supplements to said letter;
- 8) Compliance with Lower Makefield Township Police Department Traffic Safety review letter dated 10/17/18 from Thomas M. Roche, Traffic Safety Officer and any supplements to said letter;
- 9) The following Waivers are granted as outlined in the aforementioned 11/13/18 Remington & Vernick Engineers review letter and as modified after discussions today:
  - a) Waiver from Section 178-19.D11 of the Township Code to allow Applicant to defer submission to the Bucks County Conservation District until the project receives Preliminary Approval;
  - b) Waiver of Section 178-44.I of the Township Code to allow Applicant to modify the required maximum non-Residential driveway slope to 5% and the maximum change of grade of 7% to provide a slope of 5% for the first 25' plus or minus past the edge of Big Oak Road cartway and then 10% thereafter at western access drive only;
  - c) Waivers allowed regarding existing lighting to remain in areas where existing. Phase I Development is not proposed to be altered rather than the minimum 0.5 foot candle light intensity in parking areas otherwise required by Section 178.53.A of the Township Code contingent upon the Applicant providing additional site safety lighting where directed by the Township engineer;
  - d) Waiver to allow grading within the five-foot area to accommodate street sidewalks rather than the minimum five feet from the property lines or right-of-way lines otherwise required by Section 175-95.C of the Township Code;

- 10) Where applicable, Applicant shall comply with appropriate Authorities responsible for approval of proposed utilities;
- 11) Applicant shall pay the required and appropriate Fees associated with this project.

Mr. Murphy agreed to accept the Conditions as outlined.

Mr. Grenier stated there was a note about not requiring the wetlands delineation and some mention of potential wetland impacts. Mr. Truelove stated the Applicant's engineer discussed this today and had indicated that a wetland delineation was not required as the project was approved as part of the Settlement Agreement. Mr. Truelove stated Mr. Majewski agreed with that as well. Mr. Grenier stated that is relative to their compliance with our Natural Resource Protection Ordinances and has nothing to do with if they had any impacts that would require a Chapter 105 Permit from the DEP or a 404 Permit from the Army Corps, and Mr. Murphy agreed.

Mr. Zachary Rubin asked if the two other Parties that signed onto the 2006 Agreement, Residents Against Matrix and Dana Weyrick, signed onto this Agreement; and Mr. Murphy stated they did not because it is consistent with the already-approved Settlement Agreement, and their approval is not required. Mr. Rubin asked Mr. Truelove if he agrees with Mr. Murphy's interpretation, and Mr. Truelove agreed.

Mr. Rubin stated this Agreement does not preclude a Dunkin' Donuts in the future, and Mr. Ferguson stated that would require a separate approval. Mr. Murphy stated a Restaurant, as defined by the Township's Ordinance, is a permitted use; however, it is a different use from a restaurant with a drive-in. He stated the staff and the Solicitor's position is that any restaurant use that includes a drive-in component is what would trigger the need for Ms. Weyrick, Mr. Cruzan, and everybody else to sign off. Mr. Ferguson stated if a Dunkin' Donuts would re-emerge without a drive-through, that would be a use by right. If it were to have a drive-through, that would not be a use by right.

Mr. Rubin stated the name of the road is Robert Sugarman Way as he was the attorney who represented Residents Against Matrix; and for ten years, he and the Residents Against Matrix fought the Township and the Matrix Development Corporation from putting in big box retail.

Mr. Jack Matthews stated he works at the end of Old Oxford Valley Road, and there were two accidents there last week. He stated the problem is people coming out of the Octagon Center trying to make a left toward Oxford Valley Road have a long way to travel to get into a travel lane the direction they want to go. He stated there is “too much going on” in one area. Ms. Tyler stated they looked into what traffic improvements they could place upon the developer. Mr. Matthews stated he was just commenting on the accident numbers since he saw two of them last week. Mr. Ferguson stated the numbers he gave were for 2016, 2017, and 2018.

Motion carried unanimously.

#### APPROVE ORDINANCE AMENDING CHAPTER 178 SALDO TO REVISE CERTAIN TREE REPLACEMENT AND PROTECTION PROVISIONS

Mr. Grenier stated the EAC had made suggestions for updates/revisions to make this a more efficient Ordinance. He stated it was then put before the Planning Commission for review, and this was recommended unanimously by the Planning Commission. Mr. Grenier stated while there will still be tree replacement requirements, the Applicants will be given credit for street trees, landscaping trees, etc.; and it makes for “easier math,” and gives credit where he feels credit is due for putting in trees which is the ultimate goal of the Ordinance. Mr. Grenier stated in going through the process, they did run numbers on some older projects using the new approach, and they did not see a significant change on some projects in terms of the number of trees required although they did see a reduction on some other projects if they planted a lot of street trees.

Mr. Majewski stated for the SALDO section of the Ordinance, the tree protection area requirements were extended to include off-site trees. Ms. Tyler asked Mr. Majewski to explain the two changes to the Ordinance. Mr. Majewski stated the first is the one he just mentioned. He stated we currently require a tree protection area 15’ away from trees so that they do not disturb that area as it could adversely impact the roots of the trees; and there are some developments where they were right up next to the property line and there were trees off site so that there could be impacts to the root structure of trees on adjoining lots. Mr. Majewski stated this will now include trees that may not be on the property but adjacent to it. He stated the other section was the what Mr. Grenier discussed, and the Tree Replacement Ordinance as currently written did not include trees that the developer planted on site. He stated now they will count trees such as buffer trees and street trees and be given credit for those.

Mr. Lewis moved and Dr. Weiss seconded to approve advertising an Ordinance amending Chapter 178 SALDO to revise certain tree replacement and protection provisions.

Mr. Alan Dresser, 1907 Linbrook Drive, stated he looked at six projects which were approved in the past few years, and it reduced the number of additional replacement trees by 54%. He stated they hope with this change, there will not be so many Waiver requests.

Motion carried unanimously.

**APPROVE ADVERTISING ORDINANCE AMENDING CHAPTER 200 ZONING TO REVISE CERTAIN NATURAL RESOURCE PROTECTION REQUIREMENTS AND SITE CAPACITY CALCULATIONS**

Mr. Majewski stated one of the things that they identified is that they need a little more woodlands protection than we currently have. He stated our current Ordinance anticipates protecting 70% of the woodlands on a property. He stated in compensation for that developers are allowed to put smaller lots on and more of them so it is like a density bonus if you protect the natural resources, one of which is woodlands. Mr. Majewski stated the EAC had recommended that the Township further extend those protections and the Planning Commission unanimously agreed that the woodlands protection should be increased to 85% in the RRP Zone which is the Resource Protection Zone that is along the Delaware River. He stated three acre Lots are already required, and there is not a lot of opportunity for development because of the floodplain so it will not have a major impact although there are a few Lots.

Mr. Majewski stated another Zone is R-1 where they recommended increasing the protection ratio from 70% to 80%. He stated there are not a lot of Lots left in the R-1 or R-2 Zone, and for those that are left, this would help to extend the protection slightly. He stated the more you encumber a property with resources such as floodplains, wetlands, wetland buffers, and woodlands it actually gives you a density bonus where you could have a higher density on the remaining land that is more suitable for development. He stated for the R-2 Zone it was recommended that the protection be increased to 75%. Mr. Majewski stated Part 2 of this Ordinance is amending the Resource Protection Table to account for what was just outlined. Ms. Tyler asked if the density adjustment has been altered as well; and Mr. Majewski stated there it has not, but there is a sliding scale, and the more a property is encumbered by resources, there are smaller Lot sizes and smaller setbacks.

He stated it is similar to the Farmland Preservation Lots. He stated in that case it was not environmental resources being protected, rather it was agricultural resources; and they were allowed to have slightly smaller than half acres Lots where one acre Lots would otherwise have been required.

Dr. Weiss moved and Ms. Blundi seconded to authorize advertising Ordinance amending Chapter 200 Zoning to revise certain natural resource protection requirements and site capacity calculations.

Mr. Lewis stated he would support 80% in R-1 and R-2. He stated Upper Makefield has 85% woodlands protection for all their three Zoning categories. He stated increasing protection to 80% would mean fewer replacement trees since if you cut down fewer trees, you do not have to plant as many back. Mr. Lewis stated this was the original 2017 EAC recommendation, and he feels that is a stronger resource protection level. He stated looking at the seven parcels that were R-1 and R-2 there were only two that would have impact one of which was Freeman's Farm which had a slight decrease; however, the one which he feels was a bad decision in land use was the St. Ignatius tract which represents the largest transfer of "corporate welfare that Lower Makefield has ever bestowed upon a developer," and that particular developer "least deserved it for many reasons." Mr. Lewis stated the challenge is the balance between a reasonable standard and making sure we are protecting our woodlands. Mr. Lewis stated he feels the EAC members present would also support their 2017 recommendation, and the members present agreed.

Mr. Lewis moved to amend the Motion to strike out on Page 2, Line 4 the term "70-5" and 75% and replace with 80%.

Ms. Tyler stated she would not be ready to make a judgment on this without having had the benefit of our staff reviewing and discussing this amendment. She stated she is comfortable with what has been supported by the staff. Ms. Tyler stated she is not sure that comparing Upper Makefield to Lower Makefield is the same as she does not know what their Zoning is or the size of their Lots. She stated this calculation was based upon scale. She stated she is satisfied with Dr. Weiss' Motion as it stands.

Dr. Weiss stated he would be willing to withdraw his Motion and postpone it for two weeks so that there can be additional discussion. Mr. Truelove stated they could postpone it to the February 20 meeting.

Dr. Weiss moved to postpone to February 20.

Mr. Majewski stated based on the original recommendation the EAC had and in discussions he had with Mr. Dresser, there was a concern that it might be an “overreach” and may hamstring properties a bit too much to the point that it may open us up to a legal challenge. Mr. Truelove asked if he was concerned that it could be considered a taking, and Mr. Majewski agreed. Mr. Majewski stated after he and Mr. Dresser discussed this, Mr. Dresser scaled the numbers back to the numbers they came up with in this draft, and that is also the one that the Planning Commission had voted in favor of.

Mr. Lewis stated Upper Makefield does not have a problem with 85% which is even higher. Mr. Majewski stated Upper Makefield’s Zoning, as Ms. Tyler pointed out, is a little bit different, and they have a Joint Municipal Zoning Ordinance that combines Newtown Township, Wrightstown, and Upper Makefield; and they all share the burden of different uses. He stated Newtown takes primarily Commercial and higher density components, Wrightstown takes primarily Agriculture, and Upper Makefield has a lot of hills, mountains, etc. so their protection of resources are higher and they also have the River, and that is why their numbers are higher.

Dr. Weiss stated it seems that this has already been discussed and what is being proposed is a reasonable compromise so that they do not possibly get into legal issues in the future, and Mr. Majewski agreed. Mr. Majewski stated the Planning Commission also felt this was a reasonable compromise to help preserve our natural resources. Dr. Weiss stated with that information, he is going to withdraw his Motion to postpone.

Mr. Grenier stated he was a member of the EAC in 2017 and was the liaison to the EAC in 2018 so he is familiar with the discussions. He stated although he appreciates trying to save as many trees as possible the concern with R-2 specifically as noted by Mr. Majewski is that they are small Lots and there have been issues in the past with the Tree Ordinance by developers about taking and potentially threatening lawsuits, and this was a consideration as well.

Mr. Alan Dresser stated while it would be great to have 80%, he would like to keep this moving at this time and maybe keep 80% as a future discussion once this is in place and they see how it works.

Mr. Lewis withdrew his proposed Amendment.

Mr. Dresser stated the EAC wrote a support document which describes and justifies the changes as well as shows the impact the changes would have had on some recently-approved projects in the Township.

Motion carried unanimously.

## DISCUSSION ITEMS

Mr. Grenier stated these are items that have been proposed by staff or Supervisors that they have not had a chance to discuss as a group yet and items that they may consider advertising in a future meeting or they could advertise tonight if the Board feels they have enough information.

### Consideration of a Heritage Tree Ordinance

Mr. Grenier stated much like the last two items that were considered, the EAC proposed a Heritage Tree Protection Ordinance. He stated the process was that the EAC as a group discussed the Ordinance, and it then went to the Planning Commission where constructive opinions were presented. He stated it then went back to the EAC for revisions and they then took it back to the Planning Commission where it passed unanimously to recommend to the Board of Supervisors that this be approved. Mr. Grenier stated the Ordinance is for a voluntary program that seeks to put certain protections over heritage trees, which are generally larger, older, important trees in the Township. He stated one of these is the cucumber magnolia at Patterson Farm. He stated at that location, they had a sign installed describing that tree. He stated if there is a heritage tree on private property, the property owner has the ability to put a Deed Restriction on their own land specific to that tree. He stated this provision would follow the land. He stated there are provisions within the Heritage Tree Ordinance that would allow for addressing issues with the tree if it is “sick” or falling down, and there is a procedure in place within the proposed Ordinance to address that. He stated the two major issues that came up at the Planning Commission that he agreed with were making sure that it was voluntary and making sure that there were not off site impacts; and if someone were to put a Deed Restriction on their own property, it cannot impact someone else’s property.

Ms. Tyler asked why they need an Ordinance to do this. Mr. Grenier stated much like historic preservation there are some people who are very passionate about saving big, old trees. He stated they feel they are important, and they want to protect them. Ms. Tyler asked why they need the Township to do this. Mr. Grenier stated they need the Township since they could only protect the tree as long as they live there. Ms. Tyler stated a property owner could put a Deed Restriction on their own property without this Ordinance.

Mr. James Bray stated about ten years ago a fellow master gardener provided him with a list of trees that was prepared by the Bucks County Audubon Society twenty years ago. Mr. Bray stated on the list were 400 trees throughout Bucks County that had been inventoried for the Audubon Society. He stated the trees were listed by address, and Lower Makefield Township had at least 30 of the trees on the list.

Mr. Bray stated the EAC felt that there were a lot more than 30 of these trees which are on public and private lands. He stated the EAC felt it would be a good idea to preserve some of these trees. He stated the cucumber magnolia that is on the Patterson Farm is the largest cucumber magnolia in the State of Pennsylvania, and they think it might be the largest in the United States. He stated there is no protection afforded that tree; and tomorrow if the Board of Supervisors decided to do so, the tree could be chopped down, and the EAC feels that would constitute a "crime." Mr. Bray stated these trees are as much a part of history as are the buildings that George Washington visited in 1776. He stated they feel they are richly deserving of protection.

Mr. Bray stated they also are very concerned about what they consider a taking so this Ordinance is strictly voluntary. He stated they feel that there are a lot of people who own these heritage trees that would like to put some kind of protection on the tree, and this Ordinance would be the stimulus for them to do so. He stated if they leave it up to the people alone, he does not feel it will get done.

Mr. Bray stated they started discussing this Ordinance at least four years ago when the EAC decided they wanted to at least memorialize the Patterson magnolia. He stated one of the reasons they investigated that tree was because of the list they had from the Audubon Society. Mr. Bray stated he and Mr. Dresser looked at the tree and took measurements and brought it to the attention of the Board of Supervisors who thought it was appropriate for them to memorialize the tree, have a dedication ceremony, and put a plaque in front of the tree. Mr. Bray stated they had stated that this was tree #1 in what they considered a heritage tree program although it was not formalized at that time; but they were looking ahead. Mr. Bray showed a picture of the plaque. Mr. Bray stated one of their members at the time looked into the creation of an Ordinance of this type, and they had the full approval of the Board of Supervisors before they did this. Mr. Bray stated the EAC thoroughly reviewed the draft Ordinance. He stated they had others look at it who have a different perspective, and they came up with some items that the EAC had not thought of, and they were incorporated into the Ordinance. He stated he feels what has been presented is a good product since a number of people have looked at it.

Mr. Bray stated he feels it is appropriate to approve advertisement of it tonight because the solicitor for the Planning Commission, Barbara Kirk, is a member of Mr. Truelove's firm, and she thoroughly analyzed it; and the bulk of the suggestions that were incorporated from the Planning Commission were hers so he feels the attorney review has already taken place.

Mr. Grenier stated the draft Ordinance that has gone through solicitor review as Mr. Bray mentioned was in the Board's packet. He stated it is under Discussion Items; but if the Board is comfortable because it has gone through the review, they could consider voting to advertise it tonight. He stated they could also review it and bring it back up at a future meeting.

Ms. Tyler stated she would not be in favor of voting to advertise it this evening.

Mr. Lewis stated generally he is in favor of the concept and the voluntary nature of it as he feels it is important to protect the trees that we have in Lower Makefield. He stated the only reason he would not vote to advertise tonight is he feels last year when they decided to have a three-meeting approach where they have one meeting when they discuss it, one meeting to vote to publish, and then the third meeting when they vote to approve the Ordinance was a good approach which served us well; and he would like to stay with that.

Ms. Tyler stated she feels a voluntary Ordinance is an oxymoron; however, she will read it and consider it. Ms. Tyler asked Mr. Truelove if they have any other voluntary Ordinances, and Mr. Truelove stated he could not recall any. Mr. Grenier stated it is an Ordinance that provides a structure for getting an asset into a program so that if someone were to Deed Restrict their own tree for their own property, what this does is to provide a mechanism for addressing the item that has been Deed Restricted so that there is a clear process and procedure in place for moving forward if there are any concerns. Mr. Grenier stated the items the Board received were the draft Ordinance and they also received some background on it. Mr. Grenier stated there is another version which is called a Champion Tree which is generally the largest tree of a specific species in a given State or some other geography. He stated there is a cottage industry around tourism for Champion Trees; and that is the idea here since there are people who take this seriously and are very interested.

Mr. Lewis stated giving the property owner the chance to provide this protection is similar to a Deed Restriction on a parcel, and they are giving the property owners the opportunity to protect these trees in perpetuity. Ms. Tyler stated a property owner does not need the Township to do that, and they have the right to do that on their property right now.

Dr. Weiss stated he has no problem preserving any tree, and asked if there is an incentive for a property owner to do this. Mr. Bray stated there are "bragging rights." He noted a book called "Big Trees of Pennsylvania," which is put out periodically, and it lists Champion Trees throughout the State of Pennsylvania.

He stated there are a lot of people who would be interested in seeing the tree that they have on their property in this book. He stated it is also an incentive for people in Lower Makefield Township to discuss trees and the benefits associated with trees. Mr. Bray discussed the benefits associated with trees and added they are included in the Ordinance. He stated this kind of Ordinance is in effect in many areas throughout the United States, and he discussed details of these Ordinances in other States.

Mr. Alan Dresser stated this Ordinance includes trees on public property which would be Township land and County land; and if it was designated a Heritage Tree, it would afford it additional protections so that the Township could not just cut it down. Mr. Grenier stated if there is a problem with a tree, there is a process to address that. Mr. Dresser noted that there was a red oak on Sandy Run Road that was taken down which was 5' in diameter, and it was never fully evaluated. He stated part of it was in the right-of-way so the Township could have had more of a say about it. Mr. Lewis asked the age of that tree, and Mr. Dresser stated that Ms. Helen Heinz had stated it was over two hundred years old.

#### SUPERVISORS REPORTS

Mr. Grenier stated the Financial Advisory Committee will be looking at the Township "Debt book." He stated the Sewer Authority met and reviewed the flows from last year compared to the year before; and since 2018 was a very wet year, they were able to see what shape some of the sewer lines are in.

Dr. Weiss stated the Economic Development Committee met, and they are exploring the idea of polling the business owners and working with the Golf Committee to find some revenue-enhancing ways for the business leaders in the community to enhance revenues at the Golf Course.

There being no further business, Mr. Lewis moved and Dr. Weiss seconded to adjourn the meeting at 10:20 p.m. Motion carried. Ms. Tyler was not present for the vote.

Respectfully Submitted,

Kristin Tyler, Secretary