

Upper Makefield Township Planning Commission
June 27, 2012 Meeting Minutes

The June 27, 2012 public meeting of the Upper Makefield Township Planning Commission was called to order by Chair Walt Wydro at 7:05 p.m. In attendance were the following members of the Planning Commission: Chair Walt Wydro, Member Hank Lieberman, Member Kathleen Pisauro, Member Ken Rubin and Member Greg Pitonak. Vice Chair Karin Traina and Member Bob Curtin were absent. Also in attendance were Supervisor Liaison Mary Ryan, Solicitor Mary Eberle and Director of Planning and Zoning Dave Kuhns.

PUBLIC COMMENT SESSION:

There were no members of the public present to comment.

APPROVAL OF MEETING MINUTES: Mrs. Pisauro made a motion to approve the minutes of the March 28, 2012 Planning Commission meeting. Mr. Rubin seconded the motion. All were in favor and the motion passed.

LIAISON REPORT: Ms. Ryan reported that the Board of Supervisors passed a resolution to endorse the Scenic By Way.

The Board considered an application for front facing Solar Panels on Old Dolington Road which was approved.

There were two road improvement projects completed in two neighborhoods.

Heritage Hills, Lakeside and the Court Jester area of East Grant will be receiving new water and sewer meters. Although the Township is purchasing the meters, the costs will be recouped from those residences which receive a new meter. In response to a question from a member, Ms. Ryan confirmed that the Heritage Hills Plant has additional capacity.

The Board hired a Turf Management expert to assess the fields in Brownsburg Park and make recommendations to the Board as to the best way to manage the turf.

As Stephanie Teoli has resigned, Dave Nyman will be the Interim Township Manager while the Board is seeking a new Manager.

The Board had its “kick off” meeting on the 537 Plan. DEP and the Dept. of Health gave presentations and Tom Zarko, the Township Water Consultant provided an update of the plan. All slides presented at the meeting are available on the website. There will be more special meetings this summer for residents in the affected areas but no dates have yet been set.

CURRENT AND NEW BUSINESS

Washington Crossing Animal Hospital, New Sign Review: Two new signs are proposed by the Applicant. Mrs. Pisauro asked why the two signs are so different. Mr. Wydro explained that one will go in the peak of the building but, regardless, Mrs. Pisauro thought they should be consistent. Ms. Ryan stated that she would like to see the address of the hospital on the sign. Mr. Kuhns stated that the maximum height for the free standing sign is five (5) feet and that, as part of the permitting process, the Planning & Zoning Department will require the Applicant to reduce the size pursuant to the Joint Municipal Zoning Ordinance. Mr. Lieberman made a

motion to approve the application with the caveat that the Applicant must appear before the Planning Commission again to add to the sign, that the height must be reduced per the JMZO and added to the motion Mrs. Pisauro's suggestion to put the address number on the pole instead of the sign itself so that it may be seen better. Mrs. Pisauro seconded the motion. All were in favor and the motion passed.

Alden Planning Module, 2840 Windybush Rd.: Mr. Kuhns explained that this is the same property which was subdivided last year but that this Planning Module submission has nothing to do with the subdivision. This Planning Module is for the original property as the Applicant wishes to build an accessory apartment. Mrs. Pisauro asked if that was allowed under our ordinances. Mr. Kuhns explained that it is, as long as the other aspects of the JMZO are also satisfied including that the apartment may only be for a blood relative or servant. After a brief discussion, Mr. Pitonak made a motion to approve the Planning Module. Mr. Rubin seconded the motion. Prior to the vote, there was discussion as to whether the motion for approval of the Planning Module should be contingent on the Certificate of Occupancy issued for the Accessory Apartment stating that only a blood relative or servant should occupy the apartment. Ms. Eberle advised that be left to the Planning & Zoning Department. All were in favor and the motion passed.

Noxious Weed Ordinance continued from the 3/28/2012 Planning Commission meeting:

Ms. Eberle began the discussion by stating that the last time the ordinance was considered by the Planning Commission someone brought up a good point that it was difficult to identify the plants on the original list. The various lists being considered were provided to Larry Young for review by the landscape consultants at Gilmore & Associates. Gilmore & Associates provided another list from the Dept. of Conservation & Natural Resources (DCNR). However, none of the lists contain bamboo which is the reason the discussions regarding amending the ordinance began. Previous discussions identified two types of bamboo; one good and one bad and the Township wants to prevent the "bad bamboo" from being planted in Upper Makefield. Therefore, the options for the Planning Commission are to use the DCNR list, removing the watch list section and adding the "bad" bamboo, or take the existing list in the current ordinance which lists only about 10 or 11 weeds and add the bamboo as well as any other weeds that are a concern in Upper Makefield Township.

Ms. Ryan remarked from the audience that the Environmental Advisory Council reviewed the list in the current ordinance (which is from the DEP) and recommended using the current list with the addition of the "bad" bamboo.

Mr. Wydro expressed concern with keeping the list maintained. Ms. Eberle said if the list was to be changed; the ordinance would have to be amended. Alternatively, the Planning Commission could change the ordinance to say that the list is per resolution of the Board of Supervisors. That way, the ordinance would not have to be amended should the list require updating. Mr. Wydro was in favor of the alternative option because he said the noxious weeds list does change from time to time. Ms. Eberle stated that it may be drafted that way but that the DEP list has not changed since she has been practicing law.

Mr. Rubin stated that at a previous meeting Mr. Kuhns said that he had only had to enforce the ordinance twice in recent years and in both cases, the issue was Canadian Thistle. Therefore, why is the Planning Commission considering amendment? Ms. Eberle stated that it was because of the bamboo. Mr. Rubin responded then that bamboo should be added and that should be the end of it. Ms. Eberle stated that some of the wording in the ordinance was changed as well so

that if an individual has bamboo, for example, on their property, they will not necessarily be cited. However, if they allow the bamboo to spread to neighboring yards, the penalties will kick in. Ms. Eberle continued that the State sets the penalties and the maximum penalty is \$600.00. This allows Mr. Kuhns flexibility with respect to the penalty. Mr. Lieberman stated that he was concerned that if the word “intentionally” is not included and someone happens to have bamboo in their yard and its spreading, they could be in violation of the ordinance and he did not think that should be the case. Mr. Pitonak stated he thought “intentionally” should be included. Following Mr. Lieberman’s argument, Mr. Rubin changed his position which meant that the majority thought “intentionally” should be inserted.

Ms. Eberle summed up the decisions of the Planning Commission. The penalties will be a minimum of \$300.00 and a maximum of \$600.00. The word “intentionally” will be inserted in Section 202 of the ordinance and the list will be by resolution and will be the DEP list with the addition of the “bad” bamboo. Mr. Wydro indicated there was already a motion made. Mr. Rubin seconded the motion. All were in favor and the motion passed.

(*** I did not discern anyone make the first motion to approve.)

Solar Energy Systems Ordinance, Consider Amending: Ms. Eberle, by way of introduction, explained that the current ordinance provides that in order to have front facing solar panels installed on a home, an Applicant must obtain the approval of neighbors. In addition, an Applicant must be able to show that solar energy cannot be obtained by installing the panels on the rear or side roof; not that it’s less efficient, but that it cannot be done. No one can meet that burden so, residents with southern facing homes who want to install panels on the front roof are at the mercy of their neighbors and the Board is feeling that it may not be the best way to administer this ordinance. The Board is looking for the Planning Commission to find a way to improve the ordinance. The particular section regarding neighbor approval was something the Planning Commission grappled with when first considering the ordinance. Section 507.2 of the current ordinance states that

“Requests for waivers of provisions of the Ordinance shall be made to the Upper Makefield Township Board of Supervisors and shall only be granted if the Board determines that the applicant has demonstrated that the waiver is necessary to allow the Solar Energy System on the property, and that there will be no adverse impact on surrounding properties.”

Because of this, the Board has had to deny a waiver when neighbors attend Board meetings to oppose an installation and grant a waiver when no neighbors appear to oppose an installation.

An e-mail from Mary Ryan, which was not included in the packets explains her position as a Board member and states:

“I really feel that we have overstepped our bounds. There are many cases where neighbors can make improvements to their homes that we do not regulate. A man’s home is his castle and “live free or die...” this is a land of personal choice. A neighbor can paint their house purple or put up a PVC fence around a national historic register certified home. (Both cases, I have experienced personally) Yet, we do not regulate this type of choice because it is not dangerous or impeding to others, except aesthetically. Solar panels do not cause harm to others and to the contrary, promoting a less dependent state on fossil fuels benefits us all. We are regulating aesthetic taste and that is NOT our job. If citizens want higher regulation in terms of

colors, types of fences, style of architecture, etc. they should live where an Homeowners' Association covenant protects those aesthetic values. To regulate solar panels from an aesthetic viewpoint is contrary to our role as a municipality." Ms. Eberle continued that is the heart of the e-mail.

Ms. Ryan reiterated the Board decisions regarding the two applications where a waiver was granted in one case because neighbors were not opposed to it and the other where there was one neighbor who opposed causing the Board to deny the waiver. Mr. Rubin asked about the neighbor proximity in both cases and Mrs. Pisauro discussed the issue of shade, Fire Department issues in emergency response situations and the generation of electricity for others. Mr. Wydro wondered if the Township could wait for the Jointure ordinance currently in the works. Ms. Eberle said that the board discussed the Jointure ordinance and that progress is moving at glacier pace. In addition, she said that the Jointure was unable to reach any agreement on the Historic Ordinance and she felt it was going to take a long time for the Jointure to reach agreement on a Solar Ordinance. Mr. Wydro asked what specifically should be changed and Mr. Kuhns stated that the changes would be to make it less restrictive regarding front facing panels. Ms. Eberle explained that although the ordinance does not specifically state that neighbor approval is required, that is what is resulting. The Board might be able to get around that if experts would say the right words, that it is inefficient or impossible to use to the rear or side roof, but they do not. Mr. Lieberman said he felt that was the flaw in the ordinance and totally agrees with Ms. Ryan that Solar Energy is a good thing and therefore, aesthetics shouldn't be the primary issue and maybe shouldn't be considered at all. Mr. Pitonak stated that he thought there must be a way to quantify efficiency. There are engineering calculations whereby the efficiency falls off to the point where it is not productive to install the system. Ms. Eberle pointed out that efficiency was not defined when the ordinance was drafted. In response to Mr. Rubin's questions, Ms. Eberle stated that the Township can regulate the "where" but not the "how". Mr. Rubin continued that he felt the proximity of the neighbors should be considered and that perhaps efficiency should be defined in the ordinance. Mrs. Pisauro expressed agreement with Mr. Pitonak's point. Mr. Wydro felt that the ordinance was fine as written since the ordinance already puts the onus on the applicant to demonstrate why front facing installation is the only effective or possible means for utilizing solar energy on the property.

Mr. Kuhns asked if the last half of the sentence in Section 507.2 should be removed. It states "...and that there will be no adverse impact on surrounding properties." He stated that is the section which is making the Board ask what the neighbors think. Mr. Rubin stated that the Planning Commission thought the Board should hear from the neighbors but not base its decision 100% on what they had to say. Ms. Eberle, responding to Mr. Kuhns, explained that the legal reason why it is probably not a good idea to eliminate that wording is because it also applies to ground arrays and non flush mounted panels. Therefore, she continued, if the Planning Commission wants to do something about this ordinance, Mr. Pitonak's suggestion of quantifying efficiency might be the best way to do it. Mrs. Pisauro wondered if language stating that "the Applicant has demonstrated with professional calculations that the waiver is necessary" could be added. Mr. Wydro said that Section 505 1A. 1. takes care of that. Mr. Rubin thought there should be standard specifications which would show what is efficient and what is not. He also disagreed that the current language causes the "popularity contest" issue because if the ordinance is enforced the way it is written, there is no problem and that the crux of the issue is the "wishy washiness" of the professionals. Otherwise, he stated that ordinance works. Mr. Wydro agreed. Mr. Pitonak stated that if the Planning Commission is looking for a way to tighten the ordinance up and make it less of a popularity contest, he proposed the following Language for Section 505 1. A. 1.

The Applicant must provide both technical, economic and site specific calculations showing that this is the only effective or possible means for utilizing Solar Energy on the property.

As there seemed to be a consensus, Mrs. Pisauro made a motion to approve the addition of Mr. Pitonak's suggested changes to the ordinance. Mr. Pitonak seconded the motion. All were in favor and the motion passed.

Buckingham Township Comprehensive Plan: Mr. Wydro stated that nothing in the Plan affects Upper Makefield Township. There were no other comments.

Mr. Wydro asked if there was any new business. Mr. Rubin raised the issue of the property at Route 532 and Taylorsville Road and said he thought it was an eyesore. He had heard rumblings that the property was under contract. He thought it detracted from the community and wondered if there was something the Township could do. Mr. Wydro stated that the area where the towed cars are stored should be screened under the Township ordinance. Mr. Kuhns stated that the Township has taken the owner of the property to court four times in the last fifteen years. Every time the court has sided with the property owners citing the length of time they have been there and pre-existing conditions. The Township has gotten DEP involved in the past and some clean up has occurred but the bottom line is that not much of anything is going to improve until the property is sold. There is also a family feud issue with respect to the fact that one or more of the owners wants to sell and other(s) do not.

Mrs. Pisauro made a motion to adjourn the meeting. There was inaudible second and I could not hear if there was a vote.

Submitted by: Phyllis Mehler

*** Planning Commission Members: It was difficult to hear many of you during this meeting. It seemed like the some of the microphones were turned down.

Approved: September 26, 2012