

Upper Makefield *Township*

Planning Commission Meeting; Wednesday, August 27, 2014

The August 27, 2014 public meeting of the Upper Makefield Township Planning Commission was called to order by Chair Karin Traina at 7:00 p.m. In attendance were the following members of the Planning Commission: Chair Karin Traina, Vice Chair Kathleen Pisauro, Member Hank Lieberman, Member Greg Pitonak, Member Ken Rubin and Member Walt Wydro. Also in attendance were Solicitor Peter Nelson, Director of Planning and Zoning Dave Kuhns, Supervisor Liaison Mary Ryan and Supervisor Larry Breeden.

I. Call to Order – 7:00 p.m.

II. Public Comment: No public comment.

III. Approval of Meeting Minutes:

A. March 26, 2014. With a minor date change, motion made to approve, motion second.

B. May 28, 2014. Motion made to approve, motion second.

C. June 25, 2014. With minor changes, motion made to approve minutes, motion second.

IV. Current and New Business:

A. ROW Ordinance. Con't from the June 25, 2014 PC Minutes.

B. Tabled until further review.

Mr. Nelson informs the PC the Dan Cohen's ROW Ordinance is not be challenged anywhere in other municipalities. He continues with discussing of adopting a list of historic structures and its impact with the ordinance. Mr. Nelson indicates there would be some impact, it would be more for clarification purposes. Ms. Traina reviews a list of historic properties compiled by Heritage Conservancy with the Planning Commission. Mr. Nelson clarifies that an ordinance would be prepared in conjunction with this list. As zoning protections to the structures on the list. Ms. Ryan points out the amount of structures on the list not located in a historic district. Ms. Traina asks Mr. Kuhns to follow up with Heritage Conservancy regarding more information on the list and report back to the Planning Commission. Mr. Rubin cautions the Planning Commission proceeding with restricting a great number of structures. The Wireless Ordinance prohibits placing facilities on historic homes, not properties, just structures. This list clarifies what is an historic structure. Mr. Rubin asks if there is a definition of "*historic structure*" in the Wireless Ordinance. Mr. Nelson answers no. He continues to read from the ordinance, that no tower or non-tower facilities may be placed on designated National or Pennsylvania historic places and or historic districts lists maintained by the Township or has been designated by the Township as being designated as historical significant. Having a list would clarify the ordinance. Under Conditional Use applications within certain zoning districts, having this list will bring perfect clarity for the applicant and the Township. Ms. Traina asks who ultimately will approve the list. Mr. Nelson confirms it is the Board of Supervisors. Ms. Ryan asked if this list could be used only for a Telecommunications Ordinance. Mr. Nelson answered yes. Going on to confirm the list would only be attached to whatever ordinance it chooses. Ms. Traina polls the Commission; Mr. Lieberman is in favor of the list and would like to see a master list attachable to any ordinance. Mr. Pitonak feels that residents should have input to properties placed on the list. The recently passed Solar Ordinance has no mention of historic properties. Ordinances may need to be looked at for the

historic impacts. Ms. Pisauro feels that this list could create a problem for a homeowner if they are not aware they are on the list and that this list should not hold up the ordinance and add the list at a later date. Mr. Rubin feels that having the list will change the focus of the ordinance. He goes on to say the ordinance should be approved as quickly as possible without the list attached. The list should be addressed at a later date. Mr. Rubin stated he is not comfortable with the word "historic" being vague, with no definition or criteria. He would like the two Historic Boards if regulation is sufficient in the Township regarding ordinances. Mr. Rubin offers his previous experience with lists as such, it's expensive, the Township will have to hire professionals and advertise. Is the regulation insufficient? Ms. Traina summarizes; The Wireless Ordinance is not being held up, the list is a supplemental document, explore with the two Historic Boards if there is currently adequate protection, if there is not where can protect be acquired and lastly further information with Jeff Marshal at Heritage Conservancy of how the current list was compiled, what is the background of this list, how many are on National and Pennsylvania lists and how are the Homeowners notified.

C. Mineral Rights Ordinance, Mary Eberle.

Currently a few year moratorium for drilling in the Delaware River Basin. There is no Marcellus Shale in the Delaware. There would be enough gas to be commercially feasible. The ordinance is modeled after an ordinance Nockamixon Township passed. Nockamixon Township has sued the State regarding the gas laws and the Supreme Court ruled in their favor. This ordinance controls the location of gas drilling. The size of lots and buffering. Limits the nuisances of gas drilling. It does not control the method of drilling. That is controlled by the State. This is a review process. Mr. Nelson reminds the Planning Commission that you have to allow every conceivable use within our Township borders. It cannot be a fake allowance. Mr. Nelson goes on to add it will be hard for drillers to come in because the larger pieces of land are not available and the density of population in this area. Mr. Rubin notes the pipeline language in the ordinance. Mr. Nelson notes that pipeline are exempt from zoning laws and regulations. That language is for non-public utility pipelines. This applies to gas and oil extraction drilling only. There are no zoning districts in Upper Makefield Township that allow drilling. There are located in the quarry districts of Wrightstown. Mr. Traina asks why the word "*extraction*" is not being used. Mr. Wydro points out that gas flaring is allowed and goes on to describe that is done when there is no pipeline available. He goes on to say that it is a waste of resource and a hazard. Mr. Nelson reminds the Planning Commission that is regulated by the State. Mr. Traina asks who requires impact studies. Mr. Nelson replies that the Township can include them in the ordinance. Mr. Rubin offer this may take several ordinances to regulate. Mr. Lieberman doesn't think Upper Makefield should spend the money and take the lead on this ordinance as it does not affect Upper Makefield. Mr. Wydro feels that it does affect Upper Makefield because without the Jointure, we would have to allow drilling in the Township and pass it along. Ms. Pisauro believes that there should be a recommendation to the Board of Supervisors to move this ordinance forward to the other Jointure members before Upper Makefield Township spends any more money on it. Ms. Traina agreed as does Mr. Pitonak. Mr. Rubin states there is nothing to recommend. The Planning Commission decide to find out what the Jointure Townships will be doing with this ordinance before acting on it and if the Board of Supervisors decide to spend the money.

The Delaware Basin Commission has placed a ban on fracking or drilling in the basin until 2016 or 2017. The ban could be lifted or extended.

C. Correct to JMZO, Zoning Map. Dave Kuhns.

Mr. Kuhns explains the inconsistencies to the Planning Commission of 7 lots to CM on Mt. Eyre Road and 3 lots to CR1 on Taylorsville Road. Mr. Rubin asks what the cost would be to change the maps. Mr. Kuhns states the cost would be substantial, but not overnight. Mr. Rubin asks what are the parcels if they are clerically incorrect on the map, what are they zoned. Mr. Nelson states the parcels are what they are on the map even though it is a clerical error. Ms. Traina asks what the history on the parcels to know the mistake. Mr. Kuhns explains the history of the parcels and

owners. Mr. Nelson explains the simple procedure to change the parcels; the parcels will be posted, provide notice to the owners, maps printed. Little time and effort from a legal stand-point. Mr. Rubin does not see this as a clerical error and sees this as re-zoning. Mr. Kuhns goes on to describe these seven lots as residential lots. Mr. Wydro offers these lots are unbuildable and they serve as access routes for parcels that are land locked behind the canal. Mr. Nelson offers that is seems the parcels on Mt. Eyre are almost spot zoned. Commercial parcels placed in the middle of residential area. Mr. Wydro asks if any of parcels are in the floodplain. Mr. Kuhns states there are some wetlands, but no FEMA designated floodplains. Mr. Kuhns goes on to tell the Planning Commission that currently he denied an application for construction because of the error on the zoning map. That is what prompted this on the agenda. Mr. Wydro asks how many of the 7 lots become unbuildable making them taking them from CR1 to CM. Mr. Kuhns confirms all of them because the lots are too small. Mr. Wydro doesn't seem any problem making the 3 lots CR1. Motion to recommend 7 lots be rezoned from VC1 to CM and three lots at the bottom of the map be rezoned from CM to CR1 contingent upon a letter or statement from the Bucks County Planning Commission or own Comprehensive Plan that supports good planning. Motion passed 4:2.

V. Liaison Report: Presented by Mary Ryan.

Ms. Ryan provides update on 537 Plan.

VI. Public Comment. No public comment.

VII. Adjournment. 9:45pm

Approved: October 22, 2014