

Planning Commission
Wednesday, October 27, 2021 Meeting Minutes

The October 27, 2021 public meeting of the Upper Makefield Township Planning Commission was called to order by Chair Kathleen Pisauro at 7:00 p.m. In attendance were the following members of the Planning Commission: Chair Kathleen Pisauro, Vice Chair Phil Feig, Member Bud Baldwin, Member Ken Rubin, and Member Harry Barfoot. Also in attendance were Attorney Gregg Adelman, Township Engineer Larry Young, Township Solicitor Mary Eberle, Board of Supervisor Liaison Karin Traina, and Assistant Zoning Officer Denise Burmester.

Public Comment: No public comment.

Confirmation of a Quorum: Chair Kathleen Pisauro confirmed a quorum.

Approval of Minutes:

A. August 25, 2021:

Mr. Baldwin made a motion to approve the minutes of August 25, 2021 as written. Mr. Feig seconded the motion. Mr. Barfoot abstained. The motion carried by a unanimous vote.

B. September 22, 2021:

Mr. Baldwin made a motion to approve the minutes of September 22, 2021 as written. Mr. Feig seconded the motion. Mr. Rubin abstained. The motion carried by a unanimous vote.

Discussion Items:

I. Land Development:

A. White Farm Subdivision – Final Subdivision (Expiration 11/30/21):

Ms. Eberle gave a short history of the White Farm Subdivision stating that the BOS gave preliminary final approval to the plan in 2007, which was appealed by a group of neighbors. A few years later, the Court issued an order granting preliminary plan approval but remanding the matter to the Township to determine:

1. Whether structures are allowed in the open space.
2. Whether there is compliance with the Stormwater Management Ordinance.
3. Whether the Applicant demonstrated compliance with the conditions imposed for preliminary/final approval.

Ms. Eberle referred to the very long and complicated letters from Tri-State Engineering and ESE (Toll's Engineer) stating that she and Larry Young spoke to representatives from Toll including their attorney, Gregg Adelman. They determined that it would be more beneficial to

give an overview of what each thought were the answers to the three questions rather than go through every item on review letter.

Mr. Adelman presented the overall plan for the White Farm stating it is a 77 lot single family home subdivision that originally started as 80 lots and changed over the years to comply with stormwater issues. He explained that the plan has been through the Township many times with stormwater being the biggest issue. Mr. Adelman proceeded to give Toll's resolution to the three issues set forth by the Courts:

1. To satisfy the first issue, all basins have been removed from the open space area on the plan. He noted that the open space is satisfied by the large 30 acre parcel to the right of the plan which will get conveyed to the County with some easements and well head retained by the Township.
2. Stormwater Management compliance is a major issue and point of disagreement between Toll and the Township. Toll Brothers believes that the soils on this site are not capable of infiltrating what is required under the Ordinance. He explained that over the years, Toll did do penetration and soil testing around the White Tract. There were only 4 or 5 locations found that infiltrated so they are implementing them but this will not meet compliance. As an alternative to recharge, they have instituted different stormwater volume reduction methodologies, which were accepted by the State and County. The plan also proposes three stormwater basins which use off-site discharge to the Gunser property and County open space.
3. Compliance with conditions of approval have been satisfied, as most were outside agency permits that have been obtained.

Mr. Adelman summarized that Toll believes they have met all conditions as remanded by the Court with their plan submittal and they have correctly interpreted and applied the law and ordinances. Therefore they are asking that the Planning Commission recommend to the Board of Supervisors that the final plan be approved.

Mr. Young presented his review and concerns of Toll's plan:

1. There is enough open space on the plan however the location of the space violates JMZO § 1005.A.5 requirement that it be accessible to a maximum number of residential building lots. The distance of open space on the plan is over ½ mile from the residential area and therefore is not considered accessible.
2. Toll's plan does not meet the Stormwater Management Ordinance requirements. Most of TSE's review letter deals with this issue. Some items were pointed out:
 - Recharging the aquifers is important, especially for a Township such as Upper Makefield that relies on on-site private wells and on-lot septic systems.
 - There are major concerns with the overall design of the basins and the damage it will create for downstream properties. Mr. Young cited a number of basin locations and discharge points as specific examples of areas that

- cannot handle the additional volume of run-off causing downstream properties to be adversely effected.
- The plan violates several Subdivision and Land Development Ordinances as well as Stormwater Management Ordinances. Mr. Young detailed specific SALDO ordinances, describing what is needed for each as well as probable repercussions if not addressed. He explained that there are many more examples in the letter and that Toll has not met the requirements. For this reason, he feels the plan should be recommended for denial.
 - Many issues resonate those of the Melsky Subdivision.
3. Meeting the recharge requirement is among the terms and conditions of the approval letter that has not been resolved. In 2007, Toll submitted a sketch showing various low impact development items with a calculation of how much recharge could be obtained if the soils worked out. As such, Condition #7, requiring meeting stormwater recharge volume per the stormwater ordinance, has never been done nor have they come back to the Board to say they couldn't do it. Condition #8, concerning downstream channelization of sheet flow and basin discharge has not been addressed.

Mr. Barfoot opened the discussion with the following comments:

- He agreed that this is the same circumstance as Melsky and expressed concern of how to move things forward since the issues are basically the same and they have already been discussed.
- He emphasized that the ordinances have been the ordinances for some time and compliance is and has been expected by everyone who comes to Upper Makefield.
- He questioned why Toll has not modified their plans to comply.

Mr. Adelman responded specifically to the downstream issue, stating that Toll is not changing any natural discharge points. They are not discharging to new points and not diverting. They have swales and easements in place. He voiced his disagreement with Mr. Young's interpretation and application of what is required. He referred to the PA Common Enemy Doctrine, which gives the natural right of property owner's to discharge stormwater.

Much discussion continued between the PC Members, Mr. Young, Ms. Eberle, and Mr. Adelman concerning infiltration, stormwater management, open space, compliance, ownership, legal issues, etc.

Toll and the Township disagree:

- Mr. Adelman / Toll's position is that it is impossible to comply and meet the recharge requirements due to the soils and outdated ordinances. They have not done the requested calculations because no matter what they change (build less homes, etc.), they still will not be able to infiltrate and meet the recharge requirements.

- Ms. Eberle and Mr. Young feel that if more of an attempt was made to enlarge the areas that have shown positive infiltration rates, Toll can come closer to the recharge requirements. The more water that can be infiltrated the better it is for both the water quality of the aquifer and for the volume discharge on other properties.
- Mr. Adelman contests that Stormwater can't dictate Zoning. Zoning tells you what you can and can't do with your property and it's balanced against an individual's right to develop their property. When following those rules as a property owner, other regulations should not take away that power.
- Ms. Eberle strongly refuted Mr. Adelman's comments, stating that compliance must be with everything (environmental restrictions, stormwater management ordinances) not just zoning and that if plans are laid out that do not even come close to maximizing infiltration, you need to go back to the drawing board and figure out how you can do your best to come into compliance with the ordinances.
- Ms. Eberle stated that this is the fundamental difference between Toll's position and the Township's. Mr. Adelman agreed, however clarifying that he does not see this in the ordinance.

The PC members had other concerns and comments:

- Is consolidation possible since the issues of Melsky and White are similar?
Ms. Eberle responded that there is currently a motion before the court and that the Township will not object to the consolidation portion. White and Melsky are similar in facts, legal issues, and circumstances therefore consolidating makes sense.
- How deep are the modeling soils? Can you just dig below them?
This is another item on which Toll and the Township disagree.
- UMT is environmentally friendly and proud of its open space. The residents count on re-infiltration of soil as an important way to avoid disasters as those currently taking place on the West Coast.

Mr. Baldwin made a motion to deny the plan based on the discussion and the Engineer's review letter dated October 11, 2021 in regards to the White Tract. Mr. Rubin seconded the motion. The motion carried by a unanimous vote.

II. Holiday Meeting Schedule:

Planning Commission Members discussed alternative dates to the currently scheduled November and December meetings in consideration of the upcoming holidays.

Mr. Baldwin made a motion to combine the November and December meetings into one and meet on December 1, 2021. Mr. Barfoot seconded the motion. The motion carried by a unanimous vote.

Liaison Report:

Liaison Report was presented by Karin Traina:

- The Board of Supervisors approved the lot line change for the Zaveta development on Taylorsville Road, which reduces the number of parcels from three to two.
- The 2022 budget was approved to include a small reduction in millage.
- Also approved was providing funds for some streetscape repairs in the Crossing.
- Huge thank you to the staff for their work on the budget.

Adjournment:

A motion was made by Mr. Baldwin to adjourn the meeting and was seconded by Mr. Rubin. The motion carried by a unanimous vote. The meeting adjourned at 8:09 p.m.

Approved: January 26, 2022