

Upper Makefield Township Planning Commission
Wednesday, January 23, 2013

The January 23, 2013 public meeting of the Upper Makefield Township Planning Commission was called to order by Chair Walt Wydro at 7:00 p.m. In attendance were the following members of the Planning Commission: Chair Walt Wydro, Member Kathleen Pisauro, Member Greg Pitonak, Member Ken Rubin, Member Hank Lieberman and Member Bob Curtin. Vice Chair Karin Traina was absent. Also in attendance were Supervisor Liaison Mary Ryan, Solicitor Mary Eberle, Director of Planning and Zoning Dave Kuhns and Engineer Douglas Rossino of Gilmore & Associates.

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 November 28, 2012 minutes. Mr. Rubin seconded the motion. All were in favor and the motion passed.

LIAISON REPORT: Ms. Ryan presented the Liaison Report following the Planning Commission Reorganization. She began by thanking Mr. Wydro for his service as Chair of the Planning Commission. Ms. Ryan will be the liaison to the Planning Commission again for 2013, Mr. Rattigan is the Board Chairman and Mr. Baldwin is the Vice Chair.

Regarding the Act 537 Plan, Mr. Zarko has been researching the records at the Bucks County Department of Health attempting to justify our records. The records there are not in very good shape and it took him several attempts to obtain information. When he did obtain the records, he ascertained that the Dolington Area is pretty much the way it has been described but that the Taylorsville Area records are conflicting and incomplete. Therefore, the Board has asked Mr. Zarko to do more tests in the area including a survey of the Waste Water Treatment Systems and requesting permission to do water testing as well. Since the Dolington area records are in better shape, the Township is proceeding with that and there will be a public meeting on March 18, 2013 at 7 p.m. at the Township building.

CURRENT AND NEW BUSINESS:

- A. **Planning Commission 2013 Reorganization:** Mr. Lieberman recommended Ms. Traina for Chair of the Planning Commission. Following discussion, the majority vote was for approval. Ms. Traina will be Chair of the Planning Commission for 2013. Mr. Wydro then asked for nominations for Vice Chair and indicated that Mrs. Pisauro had volunteered for the position. With no other nominations, there was a unanimous vote for Mrs. Pisauro to be Vice Chair of the Planning Commission for 2013. Mr. Wydro then asked Mrs. Pisauro if she would like to Chair the meeting for the evening to which she agreed.

- B. Grillo Planning Module; 110 Street Rd.; Accessory Apartment:** Mr. Kuhns explained that the Homeowner wants to build an Accessory Apartment or Guest House for use by family and friends. The Township's Water Consultant, Mr. Zarko has reviewed the submission and provided a review letter. Mr. Lieberman asked if the Guest House could be rented. Mr. Kuhns responded that the Zoning Ordinance only allows family members or servants to live in an Accessory Apartment. Continuing the questioning, he asked if the homeowner could subdivide the property in the future. Mr. Kuhns explained that the portion in question is under a Conservation Easement, is restricted from further subdivision and that restriction is recorded in the deed. Although there is another portion of the property which is not eased and which could be subdivided in the future, the lots created would have to conform to the Zoning Ordinance. Mr. Rubin asked about the marginal soils identified in the Planning Module. Mr. Kuhns explained that marginal soils are still able to support the septic system but when marginal soils are present, a sand mound must be installed. Ms. Eberle added that in the case of a sand mound, an Operations & Maintenance Agreement (O & M Agreement) is required. An O & M agreement has been included in the submission. With no further questions, Mr. Pitonak made a motion to approve the Planning Module. Mr. Rubin seconded the motion. All were in favor and the motion passed.
- C. Pancari Lot Line Change; 1209 Eagle Road; Revised Plan:** Ms. Denise Pancari presented the proposed revised plan for the Lot Line Change. Referred to as "Plan B", it proposes that Mr. Riss sell to Ms. Pancari and Mr. King the triangular portion shown on the plan which is in the Standard Protection Area. Ms. Pancari said that this satisfies the Conservancy Agreement and allows the buyer to locate a dwelling closer to the lot line. This would mean a reduction in the number of trees which would have to be removed. She continued that the negative impacts of this plan are that the existing approved septic location will have to be used and a number of trees will have to be removed as a result. She continued that this plan is preferable because it avoids cutting down about half of the trees they otherwise would. Before reviewing the Gilmore & Associates letter, Ms. Eberle explained that the Conservation Easement does not allow for there to be less area conserved following the Lot Line Change. The Riss parcel contains a High Protection Area, Medium Protection Area and Low Protection Area which is the approximately three acre parcel on which the Riss house and outbuildings are located. What the Board said they would not do is amend the Conservation Easement. Everything that is protected now must remain protected. What the Conservation Easement does allow is a Lot Line Change provided a new lot is not created, a lot is not attached to an adjacent property that might help it develop or create more density on another property, and the Lot Line Change cannot materially decrease the amount of acreage on the Riss property in order to effectuate the Lot Line Change. From a legal standpoint, the question the Board of Supervisors is going to want answered and what the Planning Commission will need to make a recommendation to the Board on is whether this lot line change materially decreases the acreage on the Riss property. Ms. Eberle stated that she thought it would not be unreasonable for the Planning Commission to find

that the Lot Line Adjustment does materially decrease the acreage on the Riss property but that is a policy decision the Planning Commission will have to make.

Mr. Rubin asked about the size of the Riss property. Ms. Eberle explained that the Riss property is approximately 32 acres and the proposed transfer is approximately 1 acre which is equivalent to about a 3% reduction in the Riss Property. He asked Ms. Pancari if she would have enough room to do what she wants with the property. She admitted that she would be limited and understands a pool in the back, for example would not be possible. After a brief discussion and clarification to Mr. Rubin that the Planning Commission is only voting on the subdivision and not the location of the house, etc., Mr. Rubin stated that he did not feel the transfer represented a material reduction in the Riss property. Mr. Kuhns explained where the front, side and rear yards would be. Mr. Rubin citing the Gilmore & Associates letter stated that the Engineer had a problem with the location of the patio because it would extend all the way to the triangular portion being discussed. This would require grading in the protected area which is not allowed. Ms. Eberle stated that it might be worth noting on the plan that grading cannot take place within 5 feet of the property line, etc. She also suggested a review of the Gilmore & Associates letter while keeping in mind the material reduction issue and the comments made regarding the Zoning Hearing Board decision and the affect the change in the plan might have on that. Mr. Wydro suggested he would make a motion to approve but go through the letter with “must complies” to be included with the motion. It was decided to go through the letter prior to a motion being made.

The first comment in the letter is with regard to Section 400.B. of the JMZO which requires a maximum impervious surface ratio of 5 % in the Jericho Mountain Zoning District. Mr. Rossino explained that their review showed that under Plan B, an increase in impervious surface to 6.5% would only be required and Mr. Riss’ lot could remain at a 5% maximum impervious surface. Ms. Pancari was concerned that she would now have to go back to the Zoning Hearing Board but Mr. Rossino explained that the reduction could be made part of the Board approval not requiring a return to the Zoning Hearing Board. Mr. Rossino confirmed to Mr. Rubin that with the reduction of impervious surface to a max of 6.5%, Ms. Pancari can still build a house on the lot and there is also flexibility in the allowable maximum impervious of 6.5%. The consensus was that the Planning Commission would agree to this as a condition of approval.

The Applicant will comply with Section 902 of the JMZO which requires Site Capacity Calculations for the percent of disturbances for each protected resource.

Under the SALDO, items 3 and 4 are comments and item 5 requires existing contours be added to the plan. The Applicant will comply. Item 6 is a comment and items 7 through 11 are “will complies” and address additions or revisions to the Declaration of Covenants, certification block on the plan, revisions to the plan regarding Tree Count and Tree Loss’ calculations and movement of the house on the plan to avoid grading in the protected area (although the location of the house on the property has not been exactly determined).

Regarding item 12, Ms. Pancari did not understand why the triangular portion in questions had to be designated as being in the Highest Protection Area following the Lot Line Change. She stated that under the previous plan the rectangular portion was designated as in the Highest Protection Area but that area was all wooded. She didn't think the same should apply to the portion now in question. Mr. Rossino explained that the Zoning Hearing Board decision was based on designating the rectangular portion as being in the Highest Protection Area. The engineer wasn't sure if that should still be the case under Plan B. Ms. Eberle stated that the absolute correct answer to that is to return to the Zoning Hearing Board for the relief planned for what is now taking place. She also explained that the Board had no power to change the relief granted by the Zoning Hearing Board. Mrs. Pisauro asked that if the Zoning Hearing Board granted relief with respect to a different plan, how can all the relief stay in effect? Ms. Eberle stated that with respect to this issue, the imposition of a specific condition upon which relief was granted, she didn't know a legal theory under which the Board of Supervisors and the Planning Commission as the advisory body to the Board can change a Zoning Hearing Board decision. So there is difficulty with this comment. The consensus of the Planning Commission is that Ms. Pancari would have to return to the Zoning Hearing Board.

Continuing with the review of the Gilmore & Associates letter, Mr. Wydro stated that the disposition of item 12 will affect the disposition of item 13.

Mr. Rubin stated that the Planning Commission had just received a legal opinion from Ms. Eberle that the Applicant will have to go back to the Zoning Hearing Board so the Planning Commission should act on this so that the Applicant doesn't need to return to the Planning Commission.

Mr. Wydro stated that the remainder of the comments must be "will comply." Mr. Lieberman made a motion recommending that the reduction proposed by Plan B to Mr. Riss' property is not material and conditioned approval subject to the determination that 3% is not a material reduction, that 6.5% will be the maximum impervious surface allowed on the Pancari lot and that items 12 and 13 of the letter require that Applicant return to the Zoning Hearing Board. Mr. Rubin seconded the motion. Mrs. Pisauro abstained. The remaining members voted in favor of the motion and the motion passed.

Mobile Home Park; JMZO 2013-2; Newtown Township: This is an ordinance which will not affect Upper Makefield Township. It will only affect Newtown with respect to the amount of acreage one must own to establish a Mobile Home Park.

Mrs. Pisauro made a motion to recommend approval. Mr. Curtin seconded the motion. All were in favor and the motion passed.

Zoning Map; Goodnoe Elementary School; Newtown Township: This is another ordinance from the Jointure which will only affect the property owned by the Council Rock School District, more specifically the Goodnoe Elementary School property. The property on which the school is located is currently within three different zoning districts and the desire is to make it all under one zoning district. Mr. Wydro made the motion to

approve the ordinance. Mr. Lieberman seconded the motion. All were in favor and the motion passed.

Jointure Solar Ordinance; JMZO 2013-1: Ms. Eberle explained to Terry Clemons that Upper Makefield Township had a problem with the Jointure Solar Ordinance because Upper Makefield Township already has a much more sophisticated and comprehensive stand alone ordinance some of the provisions of which clash with the Jointure ordinance. In an effort to make it work, Mr. Clemons asked Ms. Eberle to draft revisions in a way she thought she could recommend approval to the Board of Supervisors and the Planning Commission of the Jointure ordinance Mr. Lieberman stated that it looked like this ordinance leaves it up to the municipalities to do what they are comfortable with. Ms. Eberle said yes, and reading from the revised draft cited paragraph B. of the ordinance which states “the JMZO participating municipalities recognize that it has become important to allow for alternative energy producing methods including solar energy, accessory to principal uses, but have determined that it is appropriate for each municipality to adopt specific implementation regulations in the form of stand-alone ordinances adopted pursuant to that Township’s Police Power (Police Power Ordinance) to accommodate the needs of each township and to address evolving technology.” Mr. Rubin asked if this ordinance isn’t regulating anything then why is it required. Ms. Eberle explained that what the ordinance does is permits solar panels in every zoning district subject to the stand alone regulations. Mr. Wydro made a motion to approve the ordinance. Mr. Lieberman seconded the motion. All were in favor and the motion passed.

Stand Alone Solar Ordinance: Ms. Eberle explained that she needed guidance from the Planning Commission regarding page 3 section 505 of the ordinance regarding non-integrated solar panels. Mr. Rubin reminded the group that the ordinance came back to the Planning Commission because the Board felt so many applicants were requesting front facing solar panels. Neighbors who were against it prevented applicants from installing the panels while others whose neighbors did not oppose them were allowed to install the front facing panels. The Board did not want the decision to be based on “popularity”. The result was that Ms. Eberle removed the language in the ordinance regarding the allowance of front facing panels. The ordinance now only allows side and rear panels. Along the same line, Mr. Pitonak stated that the Board needed a tool to avoid the popularity contest issue. He had provided language at a previous meeting regarding demonstrating validity for front facing panels. Ms. Eberle stated that three of the five Board members do not want front facing panels at all. The proposed Section C.(2) of the revised ordinance takes the onus away from the Board by stating:

“No Flush-Mounted Solar Panels shall be visible from a street which abuts the front yard of the property unless the applicant provides both technical and economic site-specific calculations which demonstrate valid reasons as to why this location is the only effective means for utilizing solar energy on the property, and such calculations are certified by a professional deemed qualified by Upper Makefield Township and reviewed by the Upper Makefield Township Engineer and any other Township Professional deemed necessary.”

Mr. Wydro said that this ordinance will be back again because this is emerging technology. Mrs. Pisauro stated that she and Mr. Rubin are still against front facing panels. Mr. Lieberman stated that he was ok with the ordinance the way it is now written since Ms. Eberle has inserted the language regarding accessories. Mr. Curtin stated that he was against a black and white rule. Mr. Wydro stated that to forbid front facing panels precludes every house on the north side of and east/west street in this Township from having solar panels. Ms. Eberle will provide a revised ordinance to the Board with the “Pitonak” language” regarding quantifying efficiency included for the Board to consider. This only applies to non integrated panels. Integrated panels are still allowed on front facing roofs.

With respect to installing solar panels on accessory buildings, Ms. Eberle began by explaining the “pergola” situation. A homeowner cannot just put solar panels on stilts and call it a residential accessory structure. Mr. Rubin felt the language should be tightened up because, for example, a homeowner could put up posts with solar panels on them and state that the function is to provide shade. Ms. Eberle suggested that the last sentence from Section 505 C. (5) be removed which states that “Solar Panels supported by posts or supports which serve no other function customarily incidental to the primary residential structure are prohibited.” She feels that the removal of this sentence will not allow an argument for a pergola type structure. Mrs. Pisauro asked if a variance from the Board of Supervisors could be obtained for something which was architecturally pleasing but was built solely for purposes of supporting solar panels. Ms. Eberle stated that there is still a provision at the end of the ordinance that would allow a waiver by the Board. Mr. Kuhns asked if that section had to remain in the ordinance. She responded by saying that it is rare to have an ordinance that doesn’t provide for relief. Ms. Ryan stated from the audience that the section allowing waivers is problematic for the Board of Supervisors because potential applicants go to the waiver idea first instead of as the last possible solution. Section 507, Appeals and Administration has three sections. Section 1 describes parties aggrieved by a decision of the CEO enforcing the terms of the ordinance may appeal to the Board pursuant to Local Agency law. Section 2 addresses waivers of the provisions which may be granted only 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 to neighboring properties. No. 3 addresses the fact that appeals and requests for waivers must be mailed by Certified Mail. Following discussion, Ms. Eberle stated that if item 2 is removed, then everyone would have to put the panels on the side or rear roofs unless they could show the “Pitonak Language solution. Then the issue would not go to the Board. The Township Engineer would determine if the standard has been met and if someone felt the Township Engineer did not determine that correctly, then under item 2, they could appeal to the Board of Supervisors. The consensus was to remove Item 2 in Section 507.

Ms. Eberle then asked the group to consider Ground Arrays and whether or not they wanted to consider restrictions presenting a scenario where the applicant could meet all the criteria of the ordinance because of the amount of land involved and electrical

capacity need, (a farm for example) which could create a large ground array. After discussion, the members decided to further restrict ground arrays by limiting the sizes to

4000 square feet for 100 acres or more of property;
2000 square feet for 10 – 100 acres of property; and
1000 square feet for 4-10 acres of property.

Ms. Eberle will revise the ordinance based on the discussions for consideration by the Board of Supervisors.

The meeting was adjourned.

Submitted by: Phyllis Mehler

Approved March 27, 2013