

Planning Commission
Wednesday, February 26, 2020 Meeting Minutes

The February 26, 2020 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, Member Bud Baldwin, Member Ken Rubin and Member Walter Wydro. Vice Chair Phil Feig and Member Jack Wiseman were absent. Also, in attendance were Diana Nolan, BOS Liaison, Township Solicitor Mary Eberle, Township Hydrogeologist Thomas Zarko, and Zoning Director Dave Kuhns.

Public Comment: No public comment presented.

Confirmation of a Quorum: Ms. Pisauro confirmed a quorum with all active members attending.

Approval of Minutes:

- A. **January 22, 2020:** Mr. Baldwin noted a spelling error on the first page.
Mr. Wydro made a motion to approve the minutes of January 22, 2020 with changes noted.
Mr. Baldwin seconded. Motion carried by a vote 6 – 0.

Land Development:

A. **Geopedior Planning Module, 386 Brownsburg Road East:**

Mr. Kuhns announced that the subdivision plan is for five (5) lots. The plan received final approval from the Board of Supervisors on February 4, 2020. The item for review this evening is the planning process for the sewage treatment facilities on the property which must be approved by the Planning Commission and Board of Supervisors.

The Planning Commission discussion included the following:

- Confirmation that the planning module was approved by Bucks County Department of Health.
- The Planning Commission is reviewing the plan to ensure it is compliant with the provisions within the Subdivision and Land Development ordinance.
- Requirements noted on the Planning Module submission and the Hydrogeologist's review (page 2) regarding safeguarding the Red-Bellied Turtle were sufficient.

Mr. Baldwin made a motion to approve the planning module as compliant with the provisions in the Subdivision and Land Development Ordinance and the Requirements documented in the Township Hydrogeologist's Review letter for safeguarding the Red Turtle. Mr. Wydro seconded the motion. Motion carried by a unanimous vote.

Ordinances:

A. **SALDO, Hydrogeologic Reports, continued from the January 22nd Planning Commission Meeting:**

Mr. Zarko, the Township Hydrogeologist, introduced himself and the amendments. With the Board of Supervisor's review of the recent Subdivision application for Wolfinger, a 3 lot subdivision, they requested that the applicant meet with the Township Hydrogeologist to review the requirements of the SALDO and the possibility of less stringent requirements for this small

subdivision. Per that request and the review for the Wolfinger application, Mr. Zarko is making a recommendation to change the ordinance to distinguish Hydrogeologic requirements for a subdivision 5 lots and small from subdivisions larger than 5 lots. The hydrogeologic requirements for a subdivision larger than 5 lots remain as the ordinance is currently written. The hydrogeologic requirements for a subdivision 5 lots and smaller have the following changes to the original ordinance requirements:

- Well analysis required for the wells on the property site only. Subdivision of 5 lots or less will not require analysis of wells that are not on the property site within a half mile radius.
- The requirements for the stringent 48 hour pumping test of the wells on site have been relaxed a bit for subdivisions of 5 lots or less.

There are also requirements that were reviewed and not changed to include the impact analysis of neighboring wells with the developer required to provide remediation within a year to any wells that are impacted with the new development.

These changes have been reviewed by a third-party consultant and their recommendations were also incorporated into the changes.

Mr. Zarko and the Consultant believe these changes to be valuable and reasonable and do recommend that these changes are accepted by the Planning Commission with a recommendation of approval to the Board of Supervisors.

The following items were discussed with the Planning Commission:

- Dimensions of the lot for 5 lots or less. The dimensions will remain as defined in Subdivision Land Development and Zoning Ordinances.
- Cost for subdivision were evaluated. Compliance with current ordinance for a ten (10) lot subdivision would cost approximately \$30,000.00. With the new criteria in the ordinance a five (5) lot subdivision would cost approximately \$10,000.00.
- The decision to make five (5) lots the discriminating subdivision size was determined based on how significant an impact would be the aquifer. Mr. Zarko further explained that he would not recommend any reduced analysis for a subdivision of two (2) lots than what is proposed with the new ordinance language.
- Clarification of the year remediation requirement. The year is defined from the date the new wells are activated. There was agreement the remediation period should be clarified further in the ordinance, page 3, 2nd paragraph. Language will be added to state remediation should occur upon the discovery of an issue during new well activation and for a year after the last well for the subdivision is activated. Requirements will be added to the Ordinance to state that remediation requirements are to be noted on the plans and recorded to ensure remediation is included in the development agreement.
- Escrow requirements for wells were discussed with the following topics and recommendations:
 - If the Developer purchases the land and develops the subdivision, escrow should be held for each of the lots and released one year after the final well in the subdivision is activated. A well is considered activated at the transfer of sale from the developer to a resident owner.

- If the Developer purchases the land and then sells the lots the Developer escrow will remain until the last lot is developed, unless there is another Development agreement negotiated after the transfer of sale.
- There are examples where a well escrow has been required for a Subdivision and the Township Engineer has made recommendations for the well escrow to be release five (5) years after the development of the final lot.
- Escrow requirements will be added to the language of the SALDO, requesting that well escrow agreements/terms are to be documented in the Development Agreement and on the Recorded Plan.
- R.E. Wright studies were removed from the ordinance and there was concern that the history presented with the R.E. Wright report may be a relevant factor to include. Mr. Zarko explained that he recommended the removal of the R.E. Wright studies from the ordinance because there has been a significant change in rainfall atmospheric data that was collected in 1995 that defined the water supply parameters in the report, which is a significant portion of the R.E. Wright report. Mr. Zarko noted that there is a report that was completed by USGS evaluating the hydrology in Pennsylvania, completed in 2004 and 2005, suggesting this reference could be added to the Ordinance.
- The parameters for the ground water that were struck from the R.E. Wright section, pages 12 – 13, are now covered in Chapter 26, page 3 section B.305, that address the production of the well, defining the water quality testing criteria.
- The 100-foot requirement for the separation of the well and septic system is currently included in the monitoring of the septic system plans presented when wells are permitted.
- Recommendation to add clarity to the Ordinance that the developer deliver the hydrogeologic reports prior to the Preliminary Plan approval of a subdivision. This ensures that Planning Commission and the Board of Supervisors can review the reports prior to approval.
- A review was done on the types of Subdivision and Land Development applications to determine if it was appropriate to require a Hydrogeologist Report. Several Land Development and Subdivision scenarios were discussed and there was agreement that language should be added to state “The applicant will be entitled to a waiver if they can demonstrate, that the Township Hydrogeologist agrees that the gallon per day usage increase is not greater than 1,000 gallons per day and a hydrogeologic study has been completed within the last ten (10) years.”
- ‘Traditions’ will be added to list of communities that are using water systems on Page 1.
- Page 6 language for the ‘Pennsylvania Department of Environmental Protection certified laboratory’ should be reworded for grammar.

Mr. Baldwin made a motion to approve a recommendation to the Board of Supervisors to accept the changes to the Hydrogeologic Requirements in the Subdivision and Land Development Ordinance with the noted modifications. Mr. Wydro seconded the motion. Motion carried by a unanimous vote.

B. Short-Term Rental / Family Definition Ordinance:

Ms. Eberle, the Township Solicitor, introduced the changes to Joint Municipal Zoning Ordinance. These changes were considered in response to the concerns raised by licensed Hotel and Bed and Breakfast owners. The Owner’s concern is that Air B&B and VRBO were not required to pay hotel

taxes and were not licensed which did not create a level playing field for the lodging business in the Township.

Last year the Pennsylvania Supreme Court ruled on a case named 'Slice Of Life', that originated in the Poconos, examining the operation of an Air B&B in a residential district zoned for only residential use. In the analysis of that case, the court noted that the definition of Family is a 'single housekeeping unit' and that this term is noted in many zoning ordinances. The court noted that residents of a residential district have a right to expect continuity in their community, and that their neighbors will reside at a property for more than a weekend or short term. Further the court recognized that short term residents do not have any alliance to the community and their behaviors may not reflect respect or responsibility to the community in which they are visiting. After this supreme court case ruling, that short-term rentals were not permitted in residential districts, many Municipalities are examining their ordinances for modifications to short term rentals in their community.

The JMZO Board examined the ordinance and were comfortable with the language that includes "allowing short term rentals a certain number of times per year for a period not to exceed XX number of days, provided that there is at least one off street parking spot for every bedroom". Some Municipalities have decided to allow short term rentals in residential districts. The JMZO Supervisors decided that short term rentals were not appropriate in residential districts. To curtail the short-term rentals in residential districts the JMZO is recommending an amendment to the definition of 'Family'; removing the term 'servants' and replacing with 'assistants', and adding a clause that they reside together a minimum of 30 days each year.

The Planning Commission discussed the following points:

- The hotel and Air B&B argument that the short-term rentals do not pay any taxes may not be accurate. By law, short-term rental owners are required to pay a 11% tax. 60% of that tax goes to the State and 5% goes to Bucks County. The Municipalities do not receive any of that tax collection.
- Clarification that short-term rentals would still be permitted in non-residential districts such as VR, VC1 and VC2, but would not be permitted in the residential districts with the ordinance changes.
- Confirmed that the Supreme Court of Pennsylvania has deemed this ruling to be Constitutional.
- This ordinance does not restrict the renting of a bedroom within a residential property. This regulation is for renting the entire house. There was concern that there was not enough clarity in the ordinance to understand the differences in renting a room in a residential dwelling and renting an entire residential dwelling.
- Clarification that 'gratuitous guest' is not an immediate family member.

Mr. Baldwin made a motion to approve a recommendation to the Board of Supervisors to accept the changes to the definition of 'Family' in the JMZO. Mr. Wydro seconded the motion. Motion carried by a 4 - 1 vote.

C. On-lot Disposal System (OLDS) Ordinance Amendment:

Mr. Zarko presented the amendment that was brought to him via a request from the Board of Supervisors to examine a requirement of inspection of the OLDS for a property upon transfer

of ownership. This inspection will ensure the OLDS is functioning properly prior to a new owner taking ownership. Currently the OLDS is inspected on transfer as a requirement for a mortgage on a property. If a mortgage is not involved, there is no requirement to inspect the system prior to transfer. The Board of Supervisors requested an examination of other Municipalities and their requirements for OLDS inspection upon transfer of ownership. Mr. Zarko did find that there are other Municipalities that do require that the septic is pumped and inspected prior to transfer of ownership. The recommended amendment to the Upper Makefield OLDS Ordinance will require the pumping and inspection of the septic prior to transfer. Additionally, if there is any maintenance agreement associated with the property, this agreement is transferred to the new owner.

The Planning Commission discussed the following points:

- Clarification that these amendments are to protect the buyer as well as protect the systems.
- If the home is part of an estate as an intra-family transfer, the inspection requirement would not apply.
- Cost and ability of compliance with the requirements needs to be discussed with local Septic Hauler. Mr. Zarko will do this research.
- When problems are discovered in inspection, the ordinance does not allow for the buyer to replace the system with escrow funds or otherwise after the transfer of ownership. Mr. Zarko explained that depending on the issues discovered, a damaged septic could potentially function using the septic tank as a holding tank for a short period of time. It was recommended that language should be added that the system must be repaired within 60 days of settlement.

It was agreed that Mr. Zarko will do the research with Septic Haulers as well as amend the language for septic repairs. The Planning Commission asked that Mr. Zarko return with the information and changes.

Liaison Report:

Ms. Nolan noted that the Board of Supervisors had approved the Geopedior Subdivision plan at Brownsburg Road East and the McAllister Subdivision plan.

The Census is being conducted from April 1, 2020 to July 31, 2020. Census will initially be requested online, with a questionnaire to be mailed to the resident. If there is no response from a resident by May 1, 2020, Census will do a home visit to have it completed. Census counts tie to Grants and number of Representatives at the State level and it is very important to gather this information. Census is paying \$20.00 per hour for people to canvas households.

Corona Virus plans are being put in place. At this time it is considered minimal risk to our community.

Adjournment:

A motion was made by Mr. Baldwin to adjourn the meeting and was seconded by Mr. Wydro. Motion carried by a unanimous vote. The meeting adjourned at 8:36 p.m.

Approved: May 27, 2020