

Planning Commission
Wednesday, August 26, 2020 Meeting Minutes

The August 26, 2020 public meeting of the Upper Makefield Township Planning Commission was called to order by Vice Chair Phil Feig at 7:00 p.m. In attendance were the following members of the Planning Commission: Vice Chair Phil Feig, Member Harry Barfoot, Member Ken Rubin, Member Jack Wiseman, and Member Walter Wydro. Also, in attendance were BOS Liaison Diana Nolan, Township Solicitor Mary Eberle, Zoning Director Dave Kuhns, Zoning Administrative Assistant Denise Burmester.

Public Comment: No public comment presented.

Confirmation of a Quorum: Vice Chair Phil Feig confirmed a quorum.

Approval of Minutes:

A. June 24, 2020:

Mr. Wiseman made a motion to approve the minutes of June 24, 2020 with changes noted for page references in the Gas Station/Convenience Store Ordinance Discussion as well as noting Mr. Rubin's dissent to the Ordinance. Mr. Barfoot seconded. Motion carried by a unanimous vote.

Ordinances:

A. Septic Systems Pump At Resale Ordinance, Codified Ordinances, Continued from the Feb. 26, 2020 PC Meeting: – Discussion & Recommendation:

Mr. Zarko opened the discussion introducing the different types of inspections available for Septic Systems to include the following:

- PSMA Certified Inspection: Inspection by a Sewage Enforcement Officer. A Sewage Enforcement Officer is trained and well versed in Sewage operations and maintenance. This training is an intensive program.
- Non PSMA Certified Inspection: This type of inspection is not as intense as the PSMA Certified inspection in that it does not require a Sewage Enforcement Officer to conduct and the system component inspections are not as detailed.

Mr. Zarko noted that typically mortgage companies require a PSMA type of inspection for the transfer of sale.

Mr. Zarko's understanding is that the Board of Supervisors wanted to make sure that Septic Systems were inspected at transfer of sale. The Board did not require a PSMA level inspection, but an inspection to determine that the Septic Systems system was generally healthy.

Based on commission comment in previous reviews of the draft ordinance, Mr. Zarko made adjustments to the draft ordinance to reduce the intensity of the Septic System inspection. This is the version of the Ordinance the Planning Commission is reviewing this evening.

Based on an inquiry to a reputable local Septic Hauler, Mr. Zarko found that the cost for a Septic Tank pump out and a PSMA level inspection would range between \$600.00 and \$700.00

dollars. The cost for a Septic Tank pump out and a Non-PSMA level inspection would range between \$500.00 and \$600.00 dollars.

Another point of concern raised previously by the Planning Commission was the ability to address issues discovered in the inspection. Modifications were made to the ordinance to require the establishment of an escrow account with resolution within sixty (60) day of the settlement on the property.

With these changes noted, Mr. Zarko turned the floor to the Planning Commission members for questions, which included the following topics:

- Would there be any timeline established for the inspection of the property prior to settlement? For example, if the property owner has the septic pumped and inspected three months prior to putting the property on the market, would this event be acceptable for the pump out and inspection requirement in the ordinance for the transfer of sale? Mr. Zarko recommended that this inspection should be on a real estate checklist that would need to occur prior to the close of a property, and just as a mortgage company would require the system pump out and inspection, the Ordinance would require that the pump and inspection occur again even if the pump out occurred within the last three months.
- Planning Commission members recommendation that the cost sample and inspection expectations should be expanded to several additional Septic Haulers. Mr. Rubin noted that he had recent experience with a transfer of sale in another Township and the Septic Hauler he used charged more than \$700.00 for an inspection that was called a PSMA inspection but did not include all of the checklist items noted in the inspection report within the ordinance. Mr. Zarko noted that there are different requirements of a PSMA inspection that may not align to the current ordinance inspection checklist.

There was further discussion of additional costs associated with this Ordinance, such as the documentation of a plot plan that could require costs to locate the Septic System components for a plot plan. Mr. Rubin estimated that these costs could be in the thousands of dollars if heavy equipment is required to uncover and identify the placement of the components. Mr. Zarko clarified that the plot plan is currently a requirement of the ordinance and is not a new cost associated with the additions to the ordinance for the transfer of sale. Mr. Kuhns confirmed that the Township is receiving a plot plan with the properties submitting their pump reports.

- Mr. Rubin reminded the Commission that this ordinance will impact every single property owner within the Township because there is the likelihood that at some point every property will experience a transfer of sale.
- Other municipalities and their requirements for Septic System inspection prior to the transfer of sale were discussed for comparison. Mr. Zarko noted that the draft ordinance they were reviewing was based on an Ordinance that currently exists in Bedminster Township. Additional research would be required to determine if there are any other Municipalities in Bucks County using a similar Ordinance.
- Language in the current Septic System checklist contained in the Ordinance notes that 'It is for informational purposes only and should not be deemed to be a certification of conditions by the inspector.' Mr. Rubin suggested that by completing the checklist the

septic hauler is certifying the condition of the Septic System. Mr. Zarko responded that an inspection that offers certification of the conditions would be a PSMA inspection, which is different than what the Ordinance is requesting. The checklist in the Ordinance is to provide an overview of the Septic System to ensure it is not obviously malfunctioning. The inspection in the Ordinance is a less intensive inspection than a PSMA inspection.

- Mr. Rubin asked per the statement on the checklist that the inspection was not to be used for real estate transactions, if the checklist noted adverse Septic System information discovered in the inspection, would a property owner be required by law to disclose this information? Ms. Eberle stated that the property owner would be required to disclose the information to the buyer. Mr. Barfoot noted that the report might be used in the transfer of sale to set up the escrow account for costs if there were any problems discovered in the inspection. Mr. Barfoot recommended that the language regarding the suggestion that the checklist is not used with a real estate transaction should be removed.
- Section 124.k has an immediacy clause noting that the inspection must be conducted immediately prior to transfer of sale. Mr. Rubin recommended that this language change to require the inspection 60 days prior to the transfer of sale. Mr. Zarko agreed that the update would be made to the Ordinance.
- The Ordinance requests that the Septic Hauler provide the report of the inspection to the Township. Mr. Rubin asked how the Township would enforce or ensure that the inspection report was received. Mr. Zarko responded that the Township would notify the Realtors that the inspection was a requirement in Upper Makefield Township, and would request the addition of this requirement to the Transfer of Sale checklist used by the Realtor. Mr. Zarko also explained that if there was not compliance that the penalties documented in the existing Ordinance would be acted upon by the Township. Mr. Kuhns noted that the current rate of compliance with the ordinance is at approximately 60%. Mr. Kuhns confirmed that enforcement letters have been sent out to residents who have not completed their required Septic Pumps, estimating that approximately 300 letters have been sent to the residents over the last 2 years.
- Planning Commission confirmed with Mr. Kuhns that the Inspection Checklist is the same checklist that is currently used for Septic Hauler pump reporting. Mr. Wiseman asked if there was a reason all technical requirements of the checklist needed to be in the Ordinance, or if a vehicle such as a Resolution could be used to approve the technicalities requested on the checklist. Ms. Eberle noted that from a legal standpoint, these technicalities did not need to be included in the ordinance and a Resolution could be passed to maintain the Septic Systems Inspection checklist. Mr. Zarko advised that there need to be technical guidelines to ensure that every pumper is reporting data consistently.
- Mr. Rubin asked for clarification that in most cases the buyer is responsible for the cost of inspections of the property. Ms. Eberle agreed that ordinarily the Mortgage company requires the inspections of the property, to include the Septic System and as such is ordinarily the buyer's responsibility to pay. Mr. Rubin noted that this Ordinance shifts the burden of costs associated with the Septic System inspections from the Buyer to the Seller. Ms. Nolan asked for clarification that currently the Seller is required to do a Septic System Inspection at the transfer of sale. Ms. Eberle advised that most Mortgage

companies require the inspection and pump of the Septic System but if the transfer of sale was a cash deal, there may not be any requirement for the inspection.

Planning Commission members objected to the burden of the costs being held to the seller of the property.

- Discussion for Clarification of Section A.13 states that the Septic Hauler will deliver a copy of the report within 30 days to the Township along with the inspection fee. An inspection fee to the Township was not mentioned anywhere else in the Ordinance and there was the feeling that this fee language should be changed or removed. Ms. Eberle confirmed that a pumping fee is not included in the Ordinance otherwise. Mr. Zarko will review and make the correction.
- Ordinance Section C, Item 4 requires Date of Current Pumping, Tank Capacity and Material in the checklist. There was some confusion as to what 'Material' meant. Mr. Zarko clarified that 'Material' was the sewage that came out of the tank.
- Ordinance Section C, Item 6 statement of general system condition is not on the Inspection Report to gather that data. Mr. Zarko advised that Section A of the inspection checklist would include information to satisfy the assessment of the general system conditions.
- The Ordinance requires the submission of a diagram to show the placement of the Septic System components. Mr. Rubin pointed out that finding the components could be a cost to hire the people and the equipment to locate the components, and further explained that these are real costs to be paid by the buyer or seller, which may be onerous. Mr. Rubin suggested that the cost to generate the plan is a multiple thousand-dollar cost and not \$700.00. It was pointed out that if the cost was spent to identify the components that documenting the components via a diagram would be beneficial to the property owner. Ms. Nolan asked if the Septic Hauler was asked specifically if the plot plan was included in the \$700.00 fee. Mr. Zarko responded that his request for quote included the ordinance and the checklist to include the creation of the plot plan.
- Section F, Item 2 states 'Alternately, the financial security shall be posted by the transferor of the property addressing the costs associated with the [system]'. Mr. Rubin suggested that the language should be changed to add that the financial security should be an amount agreed upon by the transferor and the transferee. Mr. Zarko noted the suggestion and agreed. Mr. Barfoot suggested that cost of remediation is a negotiation and should be a burden to the buyer.
- The liability of the Septic Hauler that completes the inspection report was discussed. Ms. Eberle stated that the Septic Haulers will have terms in their contract to exonerate them from liability issues.
- Mr. Zarko confirmed that this ordinance is not a DEP requirement, per a question from the Planning Commission members.
- Mr. Barfoot felt that the current Ordinance requiring the property owners pump their Septic System every two to three years is adequate in ensuring the health of the Septic Systems in the Township and that the addition of the additional inspection with the transfer of sale is not necessary and an additional unnecessary expense to property owners.

Mr. Rubin made a motion to recommend to the Board of Supervisors that they not move forward with the Septic Stems Pump at Resale Ordinance.

Mr. Barfoot seconded. Motion carried by a unanimous vote.

B. Gas Station/Convenience Store Ordinance - JMZO, Continued from the June 24, 2020 PC Meeting:

Ms. Eberle opened the discussion noting that the version of the Ordinance before the Planning Commission had been updated based on the Planning Commission's prior review and comments. The review tonight is a final perfunctory review required under the MPC. The expectation that this review would not produce any updates to the Ordinance, but to finalize the approval process. For example, if there are typos found, the Ordinance will be passed with the typo. If there are any typos identified, they would be noted and next time the Ordinance is updated the typos would be corrected. Ms. Eberle stated that the Planning Commission is not required to take any action with the Ordinance. The MPC requirement at this point in the review process is only that the Planning Commission receive a copy of the Ordinance.

Liaison Report:

Ms. Nolan noted that the Census completion date has been extended to October 31, 2020, and encouraged the Planning Commission members to spread the word to encourage the completion of the Census as it can have an impact on Grant and Medicaid and Medicare funding.

The Board of Supervisors feel that there have been a spike in the in the number of Zoning Hearing Board Variance Applications. Ms. Nolan inquired if the Planning Commission was ever involved with the review of Zoning Hearing Board matters. The Planning Commission members, Mr. Kuhns and Ms. Eberle clarified that the Zoning Hearing Board members hear the Variance matters, and that the Planning Commission reviews Land Development applications to include Subdivision applications and waiver requests. Ms. Nolan wanted the Planning Commission's feedback on this spike and the process of the variance submission and review. The Planning Commission members suggested the Zoning Hearing Board may need to tighten their requirements for a variance submission. This would include the understanding of what a 'Hardship' really is for a property owner. Some Planning Commission members felt that perhaps 'Hardship' was coming to be seen as a property owner 'Inconvenience' instead of hardship. The feedback the Planning Commission members are receiving from residents is that Hardship is being granted too frequently. The Planning Commission members recommended that Ms. Nolan and the Board of Supervisors confer with the Zoning Hearing Board members to understand their position of 'Hardship'. The Planning Commission members also noted that the Zoning Hearing Board members are appointed by the Board of Supervisors and do have terms of service.

Based on the Planning Commission member suggestions that perhaps the Zoning Hearing Board review process change, Ms. Eberle explained that the Board of Supervisors must hear the Zoning Hearing Board matters prior to going to the Zoning Hearing Board because the Board of Supervisors has an automatic Party status for the hearing. If the Board of Supervisors have a position as a Party to the Zoning Hearing Board application, the review with the Board of Supervisors prior to the Zoning Hearing allows the Board of Supervisors to state their position. The presentation at the Board of Supervisors meeting is meant to allow the Zoning Hearing Board applicant to present their case to the Board prior to them issuing any opinion.

Ms. Nolan stated that the Zoning Hearing Board make a decision on the application independent from the Board of Supervisors opinion and then ask Mr. Kuhns if the Zoning Hearing Board had ever denied a Zoning Hearing Board application and how frequently this occurs. Mr. Kuhns confirmed that there have been applications denied at a rate of approximately 15% of the applications.

Ms. Nolan noted that Officer Harry Vitello had written an article that was recently published that in a Newtown publication. The article was very complementary to the Upper Makefield Township community. Ms. Nolan noted that there is a lot of support in the community for the Police Department.

Adjournment:

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

Approved: October 28, 2020