

**LOWER MACUNGIE TOWNSHIP
BOARD OF COMMISSIONERS**

The Board of Commissioners met for a special meeting on October 29, 2009 in the Township Building, 3400 Brookside Road, Macungie, PA 18062. President Kline called the meeting to order at 7:07 p.m.

CALL MEETING TO ORDER

PLEDGE TO THE FLAG

<u>ROLL CALL</u>	E. Keller Kline, President	Present
	Deana M. Zosky, Vice-President	Arrived at 7:13 p.m.
	Douglas Brown, Commissioner	Present
	William Spaide, Commissioner	Present
	Julianna Timmcke, Commissioner	Present
	William A. Erdman, Township Engineer	Present
	Peter Nelson, Township Solicitor	Present
	Renea Flexer, Township Secretary	Present
	Bruce E. Fosselman, Township Manager	Present
	Cassandra Williams, Director of Finance	Absent
	Sara Pandl, Director of Planning	Present
	Darryl Yothers, Township Treasurer	Absent

DELAWARE RIVERKEEPER

Resolution 2009-35: A RESOLUTION BY THE LOWER MACUNGIE TOWNSHIP BOARD OF COMMISSIONERS SUPPORTING FLOODPLAIN AND RIPARIAN BUFFER PROTECTION FOR THE DELAWARE RIVER WATERSHED.

The Delaware Riverkeeper requested the Township's support for floodplain regulations. The proposed Resolution is consistent with the Township's current floodplain regulations. The Planning Commission is currently discussing this matter. The Township's regulations would take precedence over DRBC regulations.

Motion by Commissioner Zosky, seconded by Commissioner Timmcke to approve Resolution 2009-35.

Due to the timeline, the Planning Commission did not review. The proposed resolution is only the Township's supporting comments to the DRBC and does not change the floodplain regulations.

There were 4 ayes, 1 opposed (Kline). Motion carried.

AGRICULTURAL ZONING

Ordinance 2009-13: AN ORDINANCE AMENDING THE LOWER MACUNGIE TOWNSHIP ZONING ORDINANCE OF 1988 BY ADDING NEW DEFINITIONS; BY REVISING ARTICLE 4 TO: ESTABLISH THE AGRICULTURAL PROTECTION (AP) DISTRICT AND THE PURPOSES THEREOF, ESTABLISH USES PERMITTED IN THE AP DISTRICT, CREATE NEW DEVELOPMENT OPTIONS IN THE AP DISTRICT, REVISE AREA AND DIMENSIONAL REQUIREMENTS, AND CREATE FARMLAND PRESERVATION TRACT REGULATIONS; AND BY AMENDING AND RENUMBERING THE REGULATIONS FOR ACCESSORY USES AND STRUCTURES

The proposed ordinance was drafted by the Planning Commission and Mary Eberle of Grim, Biehn & Thatcher. Solicitor Nelson did not feel that the current ordinance would pass constitutional muster if challenged under the existing law of this commonwealth. In May 2009, the Board of Commissioners adopted resolutions establishing a municipal cure to protect the Township from challenges and allows 6 months for a zoning amendment. Under the existing ordinance, residential

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subdivisions can develop 10% of the land and 90% must be kept open or developed with any use permitted within the agricultural rural zoning district.

The proposed ordinance allows residential subdivisions to develop 25% of the land and 75% must be kept for agricultural uses, but also allows development for emergency services, municipal public works, place of worship and schools. There is a sliding scale option with a table that sets forth the permitted number of lots based on the original tract size. There are requirements with how the 75% is permanently preserved and dimensional requirements for various uses within the zoning district. It changes the zoning district name from agricultural/rural to agricultural preservation. It adds accessory uses: winery, accessory recreational agricultural activity, and accessory residential dwellings. It removes the use of quarries.

The hearing was opened at 7:31 p.m.

Jack Knauss, 1822 Riverbend Road, is concerned with losing the 1,000 acres left of farmland and overburdening the water and sewer system with housing development. Judy Daddona, owns a 12 acre quarry on Quarry Road and confirmed that if the use would cease, the land would default to ag zoning after 1 year. Donald Miles, previous solicitor for the Township Planning Commission, read and submitted a statement on the history of the current agricultural zoning district. Grayson McNair, 5030 Valley Stream Lane, read and submitted a statement on behalf of Robert N. Rust, III urging the BOC to reconsider the proposed ordinance. Mr. McNair expressed his concerns and disappointment with the non-transparent process of the curative amendment. Lee Mescolotto, representing the property owners of 7513 Quarry Road, does not feel the zoning ordinance treats small tracts properly and requested that the board add additional uses to the proposed ordinance; hospital, nursing home, life care center or daycare center. He presented Exhibit QUARRY ROAD1. Jeff Zehr, Director of Farmland Preservation, Lehigh County Agricultural Land Preservation Board, read and submitted his statement with concerns and recommendations. Noel Culler, 1403 Morning Star Dr., confirmed with the Board that farmers were not consulted before drafting the ordinance. He feels changing the preservation percentage is a mistake. Pete Smith, 8433 Mertztown Road, requested the Board to check the validity of defending the existing ordinance to the extent that the change may be unnecessary.

Commissioner Kline explained the Board is trying to correct what Solicitor Nelson feels he would have problems defending. Mr. Nelson is more comfortable with the 75-25 percentage. Commissioner Zosky said there is only 1,000 acres of farmland left and 700 of that may be a quarry. She regrets saying yes to the curative amendment and supports the 90-10 percentage; other than at the Township, no one has told her that the 75-25 percentage is the way to go. The Lehigh Valley Planning Commission supports the 90-10 percentage. Ms. Zosky feels that in a Township that has the most productive farmland it ought to be defended and preserved at all costs. She does like the proposed ordinance narrative that describes farmland preservation and the soils. Ms. Zosky would like to hear what uses the farmers would like on the land to make a viable business. Planning Director Pandl said a curative amendment does not provide for a lot of public comment, unlike a normal rezoning process. She said the Lehigh Valley's Planning Commission's Comprehensive Plan is for strong agricultural protection of the soils. From 2002 to 2007 the Township lost over 2,000 acres of agricultural/vacant land. Ms. Pandl feels the existing ordinance does not layout a rational for farmland preservation, where the proposed ordinance does. She prefers and feels that the 90-10 percentage is the model for the Lehigh Valley and/or a sliding scale on the same percentages used at Upper Saucon Township. Ms. Zosky reviewed multiple sections of the ordinance that she would like to see changed; agricultural residue, uses, percentage option, sliding scale, lot size requirements. The maximum public floor area for a winery was set so that it wouldn't become overbuilt and become a nuisance. Commissioner Brown said this is a tough decision, but trusts the advice of the Solicitor. He feels the 75-25 percentage is the best route to preserve farmland and not lose it all under a curative amendment challenge.

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Commissioner Spaide supports the 75-25 percentage and does not want to take the risk to lose all the farmland. Commissioner Timmcke feels they should stick with the Lehigh Valley benchmark of 90-10 and is not afraid of the risk.

Solicitor Nelson said the current ordinance does not preserve farmland. It sets aside 90% that cannot be built with homes, but can build anything else. There are no easements or protections placed on that 90% and any future Board can rezone the tract. The goal of the proposed ordinance is for permanent farmland preservation. Mr. Nelson said exclusionary zoning is an extreme issue with the courts of this state. He supports that a residential use and ag use does not go together, but the courts see that as unconstitutional. Mr. Nelson explained the reason the Board did not announce to the public that this was going to be considered is so that a curative amendment would not be filed; the steps taken were legal. The creation of this ordinance was done in public at the Planning Commission meetings. The proposed ordinance can always be revisited and amended to serve the residents better, but Mr. Nelson strongly advised the 75-25 percentage. He does not feel that 90% preservation is defensible. The curative amendment expires November 3rd. If not approved tonight the Township is vulnerable to a curative amendment challenge to the existing ordinance.

Motion by Commissioner Spaide, seconded by Commissioner Brown to approve Ordinance 2009-13. There were 3 ayes, 2 opposed (Zosky, Timmcke). Motion carried.

The meeting was recessed at 9:21 p.m. and reconvened at 9:32 p.m.

ROADWAY SUFFICIENCY ANALYSIS

Resolution 2009-36: A RESOLUTION OF THE BOARD OF COMMISSIONERS OF LOWER MACUNGIE TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA, APPROVING THE ROADWAY SUFFICIENCY ANALYSIS REPORT SUBMITTED TO THE LOWER MACUNGIE TOWNSHIP TRAFFIC IMPACT FEE ADVISORY COMMITTEE.

Joseph Fiocco of McMahon Transportation Engineers explained that Act 209 enables a township to assess a fair share fee to developers to address future traffic congestion in the township. McMahon and the Traffic Impact Fee Advisory Committee (TIFAC) have worked together to project development from now to 2018. A Land Use Assumption Report was approved by the Board of Commissioners on October 15, 2009. The Roadways Sufficiency Analysis Report (RSAR) looks at current conditions of the roads and the conditions in the future. Some intersections cannot be charged a fee due to the development plans being submitted before the TIFAC was created. A total of 28 intersections were analyzed. The desired level of service (LOS) within signalized intersections during the PM peak hour is D, but intersections with particular movements would have to be a level of service E. The desired LOS within un-signalized intersections was LOS E in the east and LOS D in the west. The LOS is set at what is attainable for a retrofitted intersection. If there is a development improvement in the east, the funds must be used in the east and the same goes for the west. The RSAR is only a planning tool and can always be adjusted in the future. The large development on Alburdis and Schoeneck Roads (OPUS) has been included in the count of traffic on Rt. 100. Attorney Joseph Zator, representing Jandl Land Company, The Roman Catholic Diocese of Allentown, the Estate of Edward Wiener, and Allen Organ, suggested amending the zoning ordinance to have the same LOS as the traffic impact fee study. He also suggested including the Schoeneck Road and Rt.100 improvements in the study. Solicitor Nelson will look into Mr. Zator's comments.

The LOS D & E was discussed. The TIFAC felt these were the reasonable and cost effective approach. The TIFAC is working on a Traffic Capital Improvement Plan that estimates contributions from developers, the Township and PennDOT; the PennDOT monies are not guaranteed.

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Motion by Commissioner Brown, seconded by Commissioner Spaide to approve Resolution 2009-36. There were 5 ayes. Motion carried.

BID RECOMMENDATION

Sodium Chloride (Road De-icing Salt) – The Township joins with other communities for this bid. Staff recommends to award the contract to Oceanport for purchases on an as needed basis for an estimate of \$108,000; 1800 ton at \$62.15 per ton delivered.

Motion by Commissioner Brown, seconded by Commissioner Zosky to approve the Sodium Chloride bid from Oceanport in the amount of \$62.15 per ton. There were 5 ayes. Motion carried.

Only one bid each was received for the Leister Farm Contracts. Staff recommends awarding the bids to those bidders.

Motion by Commissioner Zosky, seconded by Commissioner Timmcke to accept the bid of Eichelbergers, Inc. for the Leister Farm well, pump and water service accessories in the amount of \$11,153. There were 5 ayes. Motion carried.

Motion by Commissioner Zosky, seconded by Commissioner Timmcke to accept the bid of Dirt Work Solutions, LLC for the Leister Farm septic system installation.

The septic system will be designed for the public.

There were 5 ayes. Motion carried.

Motion by Commissioner Zosky, seconded by Commissioner Brown to accept the bid of Engleman's Construction, Inc. for the Leister Farm basement drain and concrete floor installation in the amount of \$21,200. There were 5 ayes. Motion carried.

OTHER ITEMS FOR THE BOARD'S CONSIDERATION

1. There was a request from Public Works to purchase a loader to replace one that is out of service. After the trade-in, the purchase cost is \$124,631. A motion was made by Commissioner Brown and seconded by Commissioner Spaide to approve the purchase, but was then tabled. This item will be discussed at the November 5th BOC meeting.
2. There will be a meeting held on November 13, 2009 at 7 p.m. to discuss T.H. Properties.

ADJOURNMENT

The meeting of the Lower Macungie Township Board of Commissioners adjourned at 10:30 p.m.

Bruce E. Fosselman
Township Manager

Renea Flexer
Township Secretary
November 10, 2009