

## MEETING MINUTES

### LOWER MACUNGIE TRANSPORTATION IMPACT FEE ADVISORY COMMITTEE (TIFAC)

LOCATION: LOWER MACUNGIE TOWNSHIP BUILDING

MEETING DATE: 6:00 P.M. November 19, 2009

***Attendees:***

Don Denburg - TIFAC

John Hayes – TIFAC

Annie McGeary – TIFAC

Mike Policano – TIFAC

Jack Tibbetts – TIFAC

Doug Brown – Township Commissioner Liaison

Bruce Fossleman – Township Manager

Sandy Koza – McMahan Associates, Inc.

Jim Lancsek – Township Zoning Officer

Peter Nelson – Township Solicitor

Joe Fiocco - McMahan Associates, Inc.

1. Chairman Don Denburg called the meeting to order at 6:05 p.m. The committee then reviewed the agenda for the meeting. A motion was made by John Hayes and seconded by Mike Policano to approve the agenda. The motion was unanimously passed.
2. A motion was made by Mike Policano and seconded by Annie McGeary to approve the November 2, 2009 meeting minutes. The motion was unanimously passed.
3. There was no public comment on non-agenda items.
4. Communications –Letter from Michael Rebert, District Executive PennDOT District 5-0, dated November 17, 2009 via McMahan Assoc. (attached) regarding PennDOT funding for Act 209 projects.

Letter from Atty. Joseph Zator II dated November 17, 2009 (with additional attachment letters to the BOC dated October 27, 2009 and March 5, 2009) discussing availability of PennDOT funds and LMT township providing funds for improvements. (All attached.)

5. Public hearing for the *Transportation Capital Improvement Plan* (TCIP), dated November 2, 2009 was opened at 6:10 p.m.
  - a. Joe Fiocco reviewed the results of the Transportation Capital Improvement Plan dated November 2, 2009 and the resulting impact fees for the East and West transportation service areas.
  - b. Atty. Joseph Zator II, representing several clients, reviewed the points that he had made in the attached correspondence. He specifically commented that the attached

letter from PennDOT did not indicate that any funds would be available for Act 209 projects and that getting on the TIP was only a first step. He further commented that based on PennDOT actions during the past few months, the lack of funding has become increasingly clear.

- c. Jim Gentile of Northstar Construction stated the large impact fees would have a negative impact on business.
  - d. Don Denburg said that he would write a letter to the Board of Commissioners that would include the TIFACs recommendation, the minutes from this meeting with attached public comments.
  - e. The public hearing was adjourned at 6:35 p.m.
6. A motion was made by Annie McGeary and seconded by Jack Tibbitts to recommend that Board of Commissioners approve the *Transportation Capital Improvement Plan*, dated November 2, 2009. The motion was unanimously passed.
  7. The TIFAC reviewed an oral reading of the minutes of this current meeting. A motion was made John Hayes seconded by Jack Tibbetts to approve the November 19, 2009 meeting minutes. The motion was unanimously passed.
  8. Don Denburg noted that this was probably the last TIFAC meeting for a long while, and thanked the members for their service over the past two years.
  9. A motion was made by John Hayes seconded by Jack Tibbetts to adjourn the meeting at 6:50 p.m. The motion was unanimously passed.

DLD



November 17, 2009

Joseph M. Fiocco, P.E., PTOE  
McMahon Associates, Inc.  
425 Commerce Drive, Suite 200  
Fort Washington, Pennsylvania 19034

Dear Mr. Fiocco:

This letter is in response to inquiries in regard to a PA Act 209 Transportation Impact Fee Study in Lower Macungie Township and the potential for available matching funding for projects identified in the study from the Department of Transportation.

As the Department of Transportation and our planning partners at the Lehigh Valley Transportation Study (LVTS) prepare the 2011 Transportation Improvement Plan (TIP) for the LVTS Region, we are primarily focused on system preservation and safety projects. These type projects include bridge replacement and rehabilitation, roadway surface improvement, and addressing locations with high crash rates. While capacity adding projects will make up a small portion of the regions portfolio of projects over the next four years, we cannot be sure that will be the case two years from now, in the past capacity adding projects accounted for approximately 20 percent of the LVTS TIP.

In order for a project of the capacity adding nature to be added to the LVTS Long Range Plan it would have to be identified as part of a corridor at least a mile long and have an average Level of Service "D" or worse. Once on the Long Range Plan these type projects are eligible to be placed on the TIP based upon available funding and their place in priority order of capacity adding projects within the region.

If you have any further questions please contact me at (610) 871-4110.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Rebert". The signature is fluid and cursive, written over a white background.

Michael W. Rebert, P.E.  
District Executive  
Engineering District 5-0

050/MWR/daj

**ZATOR LAW OFFICES, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

AMERICAN HERITAGE BUILDING  
4400 WALBERT AVENUE AT RIDGEVIEW DRIVE  
ALLENTOWN PA 18104



JOSEPH A. ZATOR II  
ANDREW D. HOFFMAN  
CHRISTOPHER M. MCLEAN  
SARAH M. JOLLY  
TRISHA M. MAJUMDAR  
MICHAEL J. SHAFER  
WILLIAM M. DUSKAS

TELEPHONE 610-432-1900  
TELEFAX 610-432-1707  
E-MAIL [office@zatorlaw.com](mailto:office@zatorlaw.com)

DIRECT E-MAIL [jzator@zatorlaw.com](mailto:jzator@zatorlaw.com)

November 17, 2009

**TRANSMITTED VIA ELECTRONIC MAIL**

[bfosselman@lowermac.com](mailto:bfosselman@lowermac.com)

Traffic Impact Fee Advisory Committee  
c/o Bruce Fosselman, Township Manager  
Lower Macungie Township  
3400 Brookside Road  
Macungie, PA 18062

**RE: Traffic Impact Fee Study**

Dear Committee Members:

I am enclosing a letter dated October 27, 2009 which I recently presented to the Board of Commissioners with regard to the budgetary impacts associated with carrying out the proposed improvements under the Township's Act 209 Study. I have also included a March 5, 2009 letter which I reference in that letter.

You have continuously been told by McMahon Associates that PennDOT money will be available to fund improvements under the Act 209 study. These statements are in sharp contrast to the warnings that have been given by nearly everyone else who has addressed this issue. Representatives of the Township, the Lehigh Valley Planning Commission, and even the Traffic Impact Fee Advisory Committee have either directly stated that PennDOT money will not be available or have at least hinted that PennDOT money is nothing but a pipe dream. Heed those warnings – there is no PennDOT money available for improvements under the Act 209 study. Even if a Lower Macungie Township project does make it onto the TIP as suggested by Joe Fiocco in his September 9, 2009 letter, the possibility that PennDOT money will actually be available remains only a very remote possibility, at best. History has proven that PennDOT funding has not been available for Act 209 roadway projects in the Lehigh Valley. The imposition of a large traffic impact fee on developers in the Township will do nothing to change that reality.

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ATTORNEYS AND COUNSELORS AT LAW

Traffic Impact Fee Advisory Committee  
November 17, 2009  
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As set forth in my enclosed letter to the Board of Commissioners, the Township is facing a need for \$24 to 32 Million in new tax revenues to fund the roadway improvements envisioned under the Act 209 study. Given the revisions to the Transportation Capital Improvements Plan, we now know that this figure is just over \$30 Million. This equates to \$3.75 Million per year for each year beginning in 2011, recognizing it is too late to begin a real estate tax for 2010. That annual amount is over 25% of the total anticipated revenues in 2010 for the entire Township, as set forth in the draft budget dated October 23, 2009. The reality of the situation is that such revenues are not possible without the imposition of a real estate tax in Lower Macungie Township. The imposition of such a tax in good economic times would likely be frowned upon. Especially given the current economic situation, I know that my clients who own property in Lower Macungie Township are not in favor of a real estate tax to fund these roadway improvements, and I cannot imagine that the thousands of other Township property owners would be in favor of such a tax either.

As you move forward with the Transportation Capital Improvements Plan, you need to keep in mind the impact on the taxpayers of Lower Macungie Township.

Please feel free to contact me if I can provide any further information or respond to any questions related to this matter.

Thank you.

Very truly yours,

Joseph A. Zator II

Enclosures

cc: Board of Commissioners  
E. Keller Kline, President (via email [EKKline@lowermac.com](mailto:EKKline@lowermac.com))  
Deana Zosky, Vice President (via email [DZosky@lowermac.com](mailto:DZosky@lowermac.com))  
Douglas Brown (via email [DBrown@lowermac.com](mailto:DBrown@lowermac.com))  
Julianna Timmcke (via email [JTimmcke@lowermac.com](mailto:JTimmcke@lowermac.com))  
William Spaide (via email [WSpaide@lowermac.com](mailto:WSpaide@lowermac.com))  
Commissioners – Elect  
Joseph Pugliese (via email [pugliese56@ad.com](mailto:pugliese56@ad.com))  
Ryan T. Conrad (via email [Conrad@conradforcommissioner.com](mailto:Conrad@conradforcommissioner.com))  
Ronald Eichenberg (via email [ron@tfgrealtors.com](mailto:ron@tfgrealtors.com))  
Roger C. Reis (via email [voteforreis@aol.com](mailto:voteforreis@aol.com))  
Bruce Fosselman (via email [bfosselman@lowermac.com](mailto:bfosselman@lowermac.com))  
Peter Nelson, Esquire (via email [pnelson@grimlaw.com](mailto:pnelson@grimlaw.com))

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Traffic Impact Fee Advisory Committee  
November 17, 2009  
Page 3 of 3

William Erdman, P.E. (via email [werdman@kce-inc.com](mailto:werdman@kce-inc.com))  
Cassandra Williams, Director of Finance (via email [CWilliams@lowermac.com](mailto:CWilliams@lowermac.com))  
Citizens for Change  
    c/o Grayson McNair (via email [62wahoo@graysonmcnair.org](mailto:62wahoo@graysonmcnair.org))  
    c/o Larry Schneider (via email [LarryS@MarketingbyMCA.com](mailto:LarryS@MarketingbyMCA.com))  
    c/o Robert Rust (via email [RobertNRustIII@aol.com](mailto:RobertNRustIII@aol.com))  
Sara Pandl (via email [SPandl@lowermac.com](mailto:SPandl@lowermac.com))

**ZATOR LAW OFFICES, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

AMERICAN HERITAGE BUILDING  
4400 WALBERT AVENUE AT RIDGEVIEW DRIVE  
ALLENTOWN PA 18104



JOSEPH A. ZATOR II  
ANDREW D. HOFFMAN  
CHRISTOPHER M. MCLEAN  
SARAH M. JOLLY  
TRISHA M. MAJUMDAR  
MICHAEL J. SHAFER  
WILLIAM M. DUSKAS

TELEPHONE 610-432-1900  
TELEFAX 610-432-1707  
E-MAIL office@zatorlaw.com

DIRECT E-MAIL jzator@zatorlaw.com

March 5, 2009

Board of Commissioners  
Lower Macungie Township  
3400 Brookside Road  
Macungie, PA 18062

**RE: Draft Pennsylvania Act 209 Transportation Impact Fee Study ("Study")  
(Roadway Sufficiency Analysis Report and Transportation Capital  
Improvements Plan)**

Dear Commissioners:

This letter is a follow up to my letter of February 19, my Memorandum-Executive Summary of February 19, and the discussion at the Board of Commissioners' meeting that same evening. This letter also is being provided at the urging of Commissioner Kline, who recommended that any comments that my clients have would appropriately be put in writing. As I explained, I am communicating with you on behalf of several very concerned clients. These clients include: Jandl Land Company, The Roman Catholic Diocese of Allentown, The Estate of Dr. Edward Weiner and Allen Organ Company. We appreciate that the Commissioners listened to the concerns expressed that evening and agreed to table matters for further consideration. It is not my purpose in this letter to restate everything that was set forth in my letter and Memorandum of February 19. Rather, the purpose is to provide you with additional information and to emphasize a few particularly important points.

**Return of Traffic Impact Fees to Developers is Not a Good Option**

At the February 19 meeting, McMahon stated that if PennDOT funding is not available for projects, then Act 209 provides a mechanism for return of the impact fees to the developers after a period of time. This is true. If the dollars are not spent within the prescribed legal time frame

they must be returned to the developers that paid the impact fees. However, this is not something that is in the best interest of the Township for several reasons.

If the traffic impact fee is \$3,298.00 per new home, that will increase the price to each new homeowner by \$3,298.00. When the refund is provided to the developer, the developer will reap that windfall because the money certainly will not be returned to the various homeowners, many of whom by then may have already sold their homes to new homeowners.

Perhaps even more significantly to the Township, when the funds are returned to the developer, the Township will be without the money and also without the roadway improvements. Under the current system without traffic impact fees, significant roadway improvements have been constructed in Lower Macungie Township without the use of Township funds. Mill Creek Road is a tremendous example. I believe that the entire project from Hamilton Boulevard to Spring Creek Road was paid for by Wal-Mart and Jaindl (with right-of-way also from East Penn School District and Danweber). Jaindl also constructed significant improvements including signalization at the Route 100 - Sauerkraut Lane intersection. In a traffic impact fee environment, these private sector road projects would never have occurred. Similar projects involving cooperation between developers and the Township will not occur if the proposed huge Traffic Impact Fee is enacted.

**Level of Service E is Not Good Enough for LMT Citizens and is Contrary to the Township's Zoning Ordinance**

The McMahon Study is based upon the assumption that having a Level of Service E at the various intersections in the Study is an adequate level of service. Level of Service E is a level that is only slightly above failure. Commissioner Zosky expressed concern about this at the February 19 meeting, and we believe that it ought to be a concern of all Commissioners. Level of Service E is almost never a goal in roadway improvement projects. Citizens of Lower Macungie Township deserve better. Moreover, artificially choosing such a low level of service has the effect of "gerrymandering" the numbers.

Use of Level of Service E by the Township would be inconsistent with past Township practice, inconsistent with its Comprehensive Plan, and inconsistent with the Township's own current Zoning Ordinance requirements placed on developers. Zoning Ordinance Section 1605 places a requirement for a traffic impact study on development projects other than the smallest of residential and non-residential projects. Section 1605(2.6) states:

"Levels of service for all streets and intersections shall be listed. **All streets and/or intersections showing a level of Service below C shall be considered deficient**, and specific recommendations for the elimination of these problems shall be listed. This listing of recommended improvements shall include, but not be limited to, the following elements: internal circulation design, site access location and design, external roadway and intersection design and improvements,

traffic signal installation and operation including signal timing. All physical street improvements shall be shown in sketches.”

The Township’s own existing ordinance states that a Level of Service below C is considered deficient. Why then does the McMahon Study declare that Level of Service E is adequate? To adopt the McMahon Study and pursue a Traffic Impact Fee Ordinance based upon that Study would be a double standard. For the Township to tell developers that a Level of Service of C or below is “deficient”, and then for the Township to hold itself to a standard of Level of Service E, is inconsistent and unconscionable. It also is unlawful. As I have mentioned previously, Act 209 does not permit a Township to use developer impact fees to address problems that have existed previously.

At the February 19 BOC meeting, Mr. Fiocco of McMahon stated that \$216,000 is the amount of money necessary for the Township to bring all studied intersections in the Township up to a satisfactory level of service. Given the tremendously large expense involved in roadway improvements project, \$216,000 is next to nothing. Consequently, what McMahon essentially is telling you is that the road network in the Township is satisfactory right now. Yet, at the same time, I believe the sentiment of many people in the Township, and certainly of some people that spoke at the February 19 meeting, is that the road network is a problem right now. If it is a problem right now, it cannot be remedied with \$216,000. How is it that McMahon has said that it can be remedied by that amount? The answer is simple – the necessary level of service has been artificially depressed in order to minimize the Township and PennDOT contribution to the roads and to increase the amount being paid for by developers. Act 209 does not allow this. Not one cent of traffic impact fees may be used to correct existing problems – and yet that is what the McMahon plan envisions, even though the language has been crafted carefully to make it appear otherwise.

My clients respectfully suggest that the only way the Board can vote in good conscience for the McMahon Study is if you truly believe that the current road network in the Township is satisfactory, except for \$216,000 of needed improvements (we all know this is not the case), and if you simultaneously amend the Zoning Ordinance to also require Level of Service E.

### **The Tremendous Financial Position of the Township is Based Upon Past Development**

The Township has benefitted significantly from development. Some people like to complain about how development has been a problem for Lower Macungie Township. We respectfully beg to differ.

Lower Macungie is a cash-rich Township. It is in position to provide significant services to its citizens. In large measure, this is because of development. There are municipalities in the Lehigh Valley that have annual budgets that are approximately the monthly budget of Lower Macungie Township.

Lower Macungie has no real estate tax. The reason for this is simple. It is because the Township has received millions upon millions of dollars in realty transfer tax. The realty transfer tax has become available because of the development of properties such as those owned by our clients. Substantial millions of dollars in the Township bank accounts right now are attributable to development. That is a simple fact. Development has, in effect, subsidized the operations of this Township for a decade or more. In addition, development has paid for significant infrastructure improvements in the Township, roads and otherwise, which would not have been possible without the new homes, commercial businesses and industrial uses.

The approximately 10,000 new residents of Lower Macungie Township since the year 2000 are able to enjoy the benefits of living in Lower Macungie Township and East Penn School District because of development and developers.

The Traffic Impact Fee proposal will significantly reduce future development in all likelihood. Therefore, the tremendous prosperity that the Township has seen for more than a decade will begin to disappear. The Township already is feeling the effects of reduced realty transfer tax revenue because of the current housing recession. The exorbitant Traffic Impact Fee being proposed will exacerbate the situation not only during the recession, but will permanently reduce realty transfer tax revenues coming into the Township.

**The Proposed Impact Fee is Out of Line in the Lehigh Valley and in the Commonwealth**

To appreciate how huge the proposed Impact Fee truly is, you only need to look at other fees in the region. Based upon a combination of information obtained from PennDOT and phone calls locally, here is the landscape of the Traffic Impact Fees in the region:

Upper Saucon	\$312.00, \$347.00
Whitchall	\$811.11
Hanover (Northampton)	\$325.00
Upper Macungie	\$57.00, \$59.00, \$177.00
*Forks	\$0
Bethlehem Twp.	\$717.00
Lower Nazareth	\$684.00

\*Forks Township originally considered a traffic impact fee in the range of \$3,500.00 per peak hour trip. However, the Township instead adopted a traffic impact fee of \$1,318.00. Then, because PennDOT funds were not available, impact fees were refunded to developers and the impact fee was eliminated entirely so that it now is at \$0.00.

The proposed Lower Macungie Traffic Impact Fee is in the range of four times the fee in Whitehall Township, the highest local traffic impact fee that we were able to find.

Based on discussions over the years, there are two important reasons why the Traffic Impact Fees in other municipalities are kept at lower levels. Both of these reasons are highlighted elsewhere in this letter. The first is that Townships very often are able to obtain cooperation from developers in the construction of needed roadway improvements when those roadway improvements will be needed for and will benefit the intended development. When this is done, private dollars can go much farther than public dollars in constructing roadway improvements. The second reason is that municipalities have recognized that PennDOT funds will not be available, and therefore it is necessary that both the PennDOT and Township components of road improvements be paid for by the municipality. With this realization, Townships have only included improvements in their studies which they are willing to budget for. Other Townships have understood that taking the approach that Lower Macungie is taking will result in roadway projects not being constructed at all, and the impact fees being returned to developers.

**PennDOT Funds Will Not Be Available**

McMahon's suggestion that a "shovel ready" project will entice PennDOT to provide funding for roadway projects in Lower Macungie is a speculative, remote possibility at best. Certainly it is not realistic, and it certainly is not something that the Township can plan on. Rather, it would need to be viewed as a potential windfall if and when received. Do not take our word for it. Ask around beyond the McMahon organization. What we are saying is indeed accurate.

My clients would also respectfully suggest that if a project is only going to be built if PennDOT funds become available, it would be rather irresponsible to spend the tens of thousands of dollars of taxpayer money necessary to design and obtain approvals for "shovels ready" roadway projects, not knowing whether they will be built. That is why I suggested at the February 19 meeting that the Township needs to budget in excess of \$24 Million for roadway projects if the McMahon Study is adopted. My clients do not want to pay such unreasonable exorbitant traffic impact fees - but if they are going to be paying substantial traffic impact fees, it is only fair that a well thought out Township budgetary plan be in place. This is necessary so that the entire program does not collapse because the Township is unwilling to foot the bill for its share. To impose such a dramatic impact fee and then fail to have a budget plan in place to raise the needed Township money to build roadway improvements, is extremely poor planning and would be irresponsible. Development will pay for approximately one-third of the projected \$37 Million of improvements through the year 2018. The Township will pay the balance. To provide a plan for one-third of the funds from developers, and then fail to address a plan for the other two-thirds makes absolutely no sense whatsoever.

**The McMahon Plan Will Necessitate Imposing a Real Estate Tax in Lower Macungie Township**

One of the gentlemen from the Traffic Impact Fee Committee stood up at the February 19 meeting and said that he did not want any Township real estate taxes. My clients believe that the necessary outcome of the McMahon Study will be the imposition of a real estate tax in the

Township. After all, the Township will need to raise in excess of \$24 Million dollars; that figure will go even higher as the price of road projects increases with inflation. Given the dramatic slow down in the real estate industry and of the economy in general, I am sure that the Township has seen a dramatic drop in its realty transfer tax revenue. Even when the housing and general economic recession is behind us, you certainly cannot anticipate that the pace of development and related transfer tax revenue will remain at the levels of the past decade. Consequently, raising in excess of \$24M for the McMahon Study improvements will result in Lower Macungie citizens paying real estate taxes.

### **How the Township Can Be Realistic Moving Forward**

At the February 19 meeting, Commissioner Kline asked me how the Township can be realistic with regard to traffic improvements. I offer the following suggestions:

1. Recognize that if you impose this traffic impact fee, you are making a conscious decision to eliminate cooperative projects with developers in the future.
2. Recognize that developers are able to construct roadway improvements much more cost effectively than Townships. Consequently, there is a much more significant "bang for the buck" when a project is built by the private sector.
3. Recognize that many Townships have opted not to adopt Act 209 Ordinances for the foregoing reasons, and others which have adopted them have done so with more reasonable impact fees in order to keep the possibility of cooperative projects on the horizon. You need only look to Forks Township, Whitehall Township and Upper Macungie Township as examples. Examples given by McMahon of high traffic impact fee municipalities, New Hanover Township and Douglasville Borough, are rather poor examples. Those communities are not at all like Lower Macungie, whereas Upper Macungie and Forks are very similar to Lower Macungie in many respects.
4. Recognize that if you proceed along the path of the McMahon Study, you need to prepare a budget for the more than \$24 Million Township expense to make the road improvements buildable. That will amount to more than \$3 Million per year in new tax revenue through 2018, and that assumes no inflation. The reason I say more than \$3 Million per year is because you have 8 years to raise the money. It is already too late to impose a real estate tax for 2009. Also, the year 2018 cannot be included because the improvements are projected to be completed by 2018, so at the very latest, those tax revenues would be needed the year before; realistically, they probably would be needed sooner. In other words, the Commissioners need to put the plan in motion to institute a real estate tax now in order to subsidize the roadway projects set forth in the McMahon Report.

5. I mentioned above that the \$3 Million (without inflation adjustment) must be new tax revenue. In other words, the Township budget for ordinary and other planned expenses would be independent from this \$3 Million. Of course, this would be at a time when realty transfer taxes are significantly reduced from the figures of the last decade, and at a time when no one can expect or plan for the realty transfer tax to return to the levels the Township has experienced due to development over the past decade. Therefore, not only must the Township plan to raise an additional \$3 Million per year for the road projects proposed by McMahan, but the Township must plan to replace transfer tax revenues lost because of fewer land development projects and the general real estate recession.

**Township Transparency Dictates That Additional Information Be Provided**

A goal of the Township under this Board's leadership has been transparency in the operation of local government. That goal cannot be achieved when the Transportation Capital Improvements Plan provides only summary information about the cost estimates and improvement implementation schedule which underlie the enormous proposed traffic impact fees. What are the underlying engineering, right-of-way acquisition, utility relocation, construction and other costs which go into the \$37 million dollar total cost of roadway improvements? What markup was used with those costs to address contingencies, such as increased costs until the work is started? Has inflation been considered? When does the Township expect that the engineering, right-of-way acquisition, utility relocation and construction phases of the improvements will be started? When will they be completed? The public is completely unable to evaluate the cost estimates, and determine if the dictates of the law have been met, if the background computations for them are not made available for examination and review.

The Township requires every developer to submit detailed calculations of cost estimates for the developer's project and has the Township engineer scrutinize and revise them. Yet the Township is not providing to the Township's residents and property owners detailed information about road improvements and their costs before the Township imposes a weighty traffic impact fee which will impact the entire Township and which must result in an increase in taxes. This is not appropriate. This is not transparent government. The supporting details of this capital improvements plan should be given to the public. Openness demands no less than full disclosure.

In your role as Commissioners, you insist that much more detailed information be given to you when you consider and approve a major project or even a small project. Your attention to detail is well-known to anyone who has attended a Board meeting or worked with the Township since January, 2008. A mere completion date and a total cost as set forth in the McMahan Study, rather than a schedule and detailed cost information, simply does not seem to satisfy your routine need to be informed. It certainly does not satisfy my clients' desire for information. The public should have that information if there is to be true transparency in Lower Macungie government. We therefore ask that the same information that you would seek be provided, and that the public then be given additional time to review that information.

**ZATOR LAW OFFICES, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

Board of Commissioners  
March 5, 2009  
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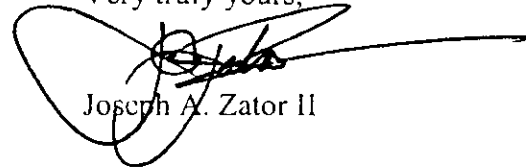
**Conclusion**

Thank you for your continued consideration of our concerns. Something else I want to mention is that prior to the meeting of February 19 and also subsequent to that meeting, I have heard from other clients as well as property owners and engineers who are not clients, all expressing agreement with our position and stated concerns regarding the proposed impact fee. However, they have elected to remain anonymous out of concern that expressing their views will "be held against them" in the future. While I do not agree that this Board would act in such a manner, I will honor those requests for anonymity.

Finally, this letter was completed prior to our receipt today of a copy of the March 2, 2009 letter from McMahon to Bruce Fosselman. I will be glad to discuss it with you at the meeting this evening. When responses have been prepared to the concerns set forth in this letter, I request that those responses also be provided as far in advance of the public meeting where they will be addressed as is possible.

Thank you.

Very truly yours,



Joseph A. Zator II

JAZ:jlw

cc: Most Reverend Edward P. Cullen  
Rev. Msgr. Alfred A. Schlert, V.G.  
Kelly C. Bruce, ARM  
Thomas Traud, Esquire  
David M. Jaendl  
Executors of the Estate of Dr. Edward Weiner  
Connie Ream  
Steven A. Markowitz  
Nathan S. Eckhart, CPA  
Michael E. Loomis, Esquire  
Harold "Bud" Newton, P.E., P.L.S., CPESC  
Bruce Anderson, P.E.  
Bruce Fosselman, Township Manager  
William Erdman, P.E.  
H. Peter Nelson, Esquire  
Grayson McNair  
Larry Schneider  
Andrew D. Hoffman, Esquire

**ZATOR LAW OFFICES, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

AMERICAN HERITAGE BUILDING  
4400 WALBERT AVENUE AT RIDGEVIEW DRIVE  
ALLENTOWN PA 18104



JOSEPH A. ZATOR II  
ANDREW D. HOFFMAN  
CHRISTOPHER M. MCLEAN  
SARAH M. JOLLY  
TRISHA M. MAJUMDAR  
MICHAEL J. SHAFER  
WILLIAM M. DUSKAS

TELEPHONE 610-432-1900  
TELEFAX 610-432-1707  
E-MAIL [office@zatorlaw.com](mailto:office@zatorlaw.com)

DIRECT E-MAIL [jzator@zatorlaw.com](mailto:jzator@zatorlaw.com)

October 27, 2009

**TRANSMITTED VIA TELEFAX**

**(610) 965-3654**

**AND ELECTRONIC MAIL**

[EKKline@lowermac.com](mailto:EKKline@lowermac.com)

[DZosky@lowermac.com](mailto:DZosky@lowermac.com)

[DBrown@lowermac.com](mailto:DBrown@lowermac.com)

[JTimmcke@lowermac.com](mailto:JTimmcke@lowermac.com)

[WSpaide@lowermac.com](mailto:WSpaide@lowermac.com)

Lower Macungie Board of Commissioners

E. Keller Kline, President

Deana Zosky, Vice President

Douglas Brown

Julianna Timmcke

William Spaide

3400 Brookside Road

Macungie, PA 18062

**RE: 2010 and Future Budgets**

Dear Commissioners:

I was at your most recent Board meeting when the 2010 Budget was noted in the discussion. I also note that you have a budget meeting on October 28 at 7:00 p.m. which I cannot attend. Given your consideration of the 2010 budget, I thought I would provide to you my correspondence of March 5, 2009, which I previously had provided to the Board of Commissioners. In particular, I invite you to review pages 5-7 of my prior letter. On behalf of several clients at several public meeting in the Township I mentioned that PennDOT funds will not be available for the road projects envisioned by your proposed Act 209 Ordinance. Others told you the same thing. At the time, the Board discounted what I said - because what I stated was inconsistent with what you were being told by your traffic consultant. In the ensuing months, I believe that you have now come to understand the accuracy of what I stated at that time. Namely, PennDOT funds will not be available for the road projects envisioned by your

proposed Act 209 Ordinance. Rather, all road projects will need to be funded directly by the Township and traffic impact fees that are collected.

You will see that the analysis in my attached letter envisions the need for a minimum of \$3,000,000.00 per year in new Township tax revenues to fund the roadway projects called for by the McMahon report. That figure is based upon a combined Township/PennDOT cost obligation of approximately \$24 Million, which was the McMahon estimate in February. The current transportation capital improvements cost estimates per the TIFAC increases that \$24 Million figure to more than \$32 Million. That means that the Township will need to raise an additional \$4,000,000.00 per year over 8 years. That assumes that a real estate tax is imposed or \$4,000,000.00 is raised otherwise in 2010; if it is not raised in 2010, the \$32 Million will need to be raised over the course of 7 years, thereby increasing the annual amount to nearly \$4.6 Million. These figures do not even account for time value of money and the inevitable increase in construction costs that will outstrip the estimates set forth in the Act 209 Study. \$4,000,000.00 per year is a daunting figure, particularly given the decreased revenues experienced by the Township and the prospects of a possible police force or a per capita police contribution per HB 1500.

If you intend to pursue the Act 209 Ordinance, then you undoubtedly must plan on imposing a real estate tax on the citizens of Lower Macungie Township. Having sat through three Commissioner candidate forums myself, I recognize that no candidate for Commissioner has an interest in imposing a new real estate tax. However, that will be the inevitable result of the Act 209 Ordinance. Therefore, you need to plan for that in your budget now. Further, since your budget discussions have included long range financial planning, do recognize that the \$4,000,000.00 figure is not a one time requirement, but will be an approximate annual requirement over most of the next decade.

Finally, you will recall that on roadway projects that involve PennDOT half of the project funding must come either from PennDOT or the Township. Developer impact fees cannot be used for more than 50% of the cost of any individual project. Just so that you are aware, it would be unlawful to use developer impact fee dollars to fully fund a limited number of projects until the impact fees are all spent with the intent of then waiting for the availability of PennDOT funds for the balance of the roadway projects included in the Act 209 Ordinance. The 50-50 obligation must be met on an ongoing basis and "front loading" the use of developer impact fees on road projects is not permissible. Therefore, if the Township adopts the Act 209 Ordinance consistent with the current work product of the TIFAC, the Township will need to raise in excess of \$32 Million to fund its portion of the road improvements.

Thank you.

Very truly yours,

Joseph A. Zator II

**ZATOR LAW OFFICES, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

Lower Macungie Board of Commissioners  
October 27, 2009  
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JAZ:jlw

Enclosure

cc: Bruce Fosselman (via email [bfosselman@lowermac.com](mailto:bfosselman@lowermac.com))  
Peter Nelson, Esquire (via email [pnelson@grimlaw.com](mailto:pnelson@grimlaw.com))  
William Erdman, P.E. (via email [werdman@kce-inc.com](mailto:werdman@kce-inc.com))  
Cassandra Williams, Director of Finance (via email [CWilliams@lowermac.com](mailto:CWilliams@lowermac.com))  
Citizens for Change  
    c/o Grayson McNair (via email [62wahoo@graysonmcnair.org](mailto:62wahoo@graysonmcnair.org))  
    c/o Larry Schneider (via email [LarryS@MarketingbyMCA.com](mailto:LarryS@MarketingbyMCA.com))  
    c/o Robert Rust (via email [RobertNRustIII@aol.com](mailto:RobertNRustIII@aol.com))  
Sara Pandl (via email [SPandl@lowermac.com](mailto:SPandl@lowermac.com))  
Candidates for Board of Commissioners