

TOWNSHIP OF LOWER MAKEFIELD
BOARD OF SUPERVISORS
MINUTES – SEPTEMBER 16, 2020

The regular meeting of the Board of Supervisors of the Township of Lower Makefield was held remotely on September 16, 2020. Dr. Weiss called the meeting to order at 7:30 p.m. and called the Roll.

Those present:

Board of Supervisors:

Frederic K. Weiss, Chair
Daniel Grenier, Vice Chair
James McCartney, Secretary
Suzanne Blundi, Treasurer
John B. Lewis, Supervisor

Others:

Kurt Ferguson, Township Manager
David Truelove, Township Solicitor
Andrew Pockl, Township Engineer
Kenneth Coluzzi, Chief of Police
Monica Tierney, Park & Recreation Director

REMEMBRANCE OF MR. BRIAN DERBY

Ms. Tierney stated she would like to take a moment to remember Brian Derby who was a key Township staff member who passed away on Monday due to COVID-19. She stated he went out of his way to be helpful and always had ideas to make things better for the Township. She stated he was very involved outside of work as well, and at one point he was a Commissioner of PAA and one of the founders of their Scholarship Program. She stated he was also a founding member of the Knights of Columbus at St. Ignatius. There was a moment of silence in remembrance of Mr. Derby.

COMMUNITY ANNOUNCEMENTS

Dr. Weiss read into the Record a Proclamation thanking Craig Bryson for his years of service on the Planning Commission. Dr. Weiss, as the Planning Commission liaison, thanked Mr. Bryson for his years of service particularly over the past two years which were difficult.

Dr. Weiss read into the Record a Proclamation thanking Eric Yeager for his years of service on Farmland Preservation, Inc. Mr. Lewis stated Mr. Yeager was a vital part of Farmland Preservation, and he did a lot of the physical work in terms of keeping the buffers in order and working with vendors to make sure the properties were kept in proper condition; and he will be greatly missed. Mr. Lewis announced that there are two vacancies on Farmland Preservation, and he asked those interested in serving to advise the Township of their interest.

Dr. Weiss stated the Historic Commission is going to have a ceremony on September 26 at 1:00 p.m. to re-dedicate gravestones for Civil War Veterans at Slate Hill Cemetery, and he invited those interested to attend. He stated it will be a socially-distanced ceremony at the Cemetery.

Dr. Weiss stated Penn State Bucks County Master Gardeners is holding a spotted lanternfly Q & A live session via Zoom on Saturday at September 19 from 9 a.m. to 10 a.m. He stated those interested can register at extension.psu.edu/slf-bucks.

Dr. Weiss stated information on Park and Recreation digital opportunities can be found on the Township Website.

Dr. Weiss announced that the EAC will be holding a Styrofoam Recycling Event on October 31 from 10 a.m. until Noon in the Township parking lot.

Ms. Tierney stated with regard to the Memorial Park project, Porous Pave donated all of the materials to pave the path at the Park. She showed slides of what the path looked like prior to the work being done. She stated the Tech School students came in and did a substantial amount of work at the Park and on the pathways. She stated initially the Tech School students were going to learn how to lay the porous pavement, but the project took longer due to humidity, and they could not lay the path down while the students were here. She stated the Porous Pave employees donated their time to lay the path over the past two days. She stated by the end of the week, they will be ready for everyone to walk on and enjoy. She showed the path now that the surface has been installed. She thanked Ms. Saracini and the donated time by Porous Pave. Dr. Weiss thanked Ms. Saracini and all the volunteers who made this a reality.

APPROVAL OF MINUTES

Mr. McCartney moved, Mr. Lewis seconded and it was unanimously carried to approve the Minutes of August 31, 2020 as written.

TREASURER'S REPORT

Mr. Ferguson stated the Warrant List amount is larger than normal. He stated there are several expenses which are included in that amount that are one-time expenses. He noted the transfer to the Ambulance Squad which is the millage that is assessed, and this is the time of year that the transfer is made. He stated that amount was \$205,000. He stated this is also the time when they send the contribution to the two Fire Departments, and that amount is approximately \$362,000. He stated there is also a manual wire for \$315,000, and he stated that is for the leaf trailers that the Township received a Grant for, which they have to pay up front. Mr. Ferguson stated in the Transfer amounts, we used \$306,416 to cover that expense from the Bond Fund. He stated we can use the Bond Fund when it is for a Capital Expense, and it will be reimbursed and put back into the Bond Fund when the Grant money comes in hopefully in six to eight weeks; and at that time the Board will be approving a transfer back into the Bond Fund for that same amount of money.

Mr. Ferguson stated with regard to the Warrant List, the items he noted above which are one-time expenses amount to approximately \$800,000.

Approval of Warrant Lists from September 8, 2020

Ms. Blundi moved and Mr. Lewis seconded to approve the Warrant List from September 8, 2020 in the amount of \$1,423,856.07 as attached to the Minutes.

Mr. Grenier stated Mr. Ferguson noted a recent advertisement about the sale of one of the fire trucks; and he asked when they do that, is the Township involved in that transaction or is that completely separate and "they use it for themselves." Mr. Ferguson stated we provide tax money to them, and they purchase the assets that they believe are needed which are owned and maintained by the Fire Department. He stated there have been instances when the Township has purchased fire trucks for the Fire Department. He stated during a transaction a few years ago when the Township purchased them a truck it cost over

\$700,000; and the Fire Department sold a truck as part of that transaction and applied the amount they were able to get for that truck to the cost of the new truck. He stated while the Township did not get money from the Fire Company, it did lower the amount that the Township had to pay for the truck. Mr. Lewis stated the Fire Department is well known for the way they keep their trucks and they get “amazing sales for their equipment,” and people look for their trucks compared to other Fire Companies.

Motion carried unanimously.

Approval of August Interfund Transfers

Ms. Blundi moved, Mr. Grenier seconded and it was unanimously carried to approve the August Interfund Transfers in the amount of \$988,864.55.

SEWAGE PROCESS UPDATE – MOTION TO REAPPROVE, REAUTHORIZE AND RATIFY THE APA TO INCLUDE A \$3,000,000 DEPOSIT AND WAIVE THE PROVISION RELATED TO REIMBURSEMENT OF UP TO \$70,000 IN LEGAL AND ENGINEERING FEES

Mr. Truelove stated as part of the process for the Sewer sale going back to when the process started, one of the tasks that was performed was to assemble all of the assets in terms of location, description, and liabilities which would be any obligations that the system has; and that was then included in an overall document called an Asset Purchase Agreement (APA). Mr. Truelove stated all of the Bidders had that document, and all of them in their Bids had the language, “The undersigned proposer hereby unconditionally and irrevocably offers to enter into the Asset Purchase Agreement (the APA) for identified Sewer facilities owned and operated by Lower Makefield...”. He stated they all had that information beforehand. Mr. Truelove stated the basic Agreement was drafted by a number of people including Mr. Wyatt, Mr. Shearer and his associate, his own office including Ms. Kirk, and was reviewed by the Township staff and others. He stated this was all assembled and made available to the potential Bidders weeks in advance of their submission.

Mr. Truelove stated there is no requirement by the Township to modify the Agreement, and there is also no obligation by Aqua to do what is being proposed. He stated what is being proposed tonight is the same value within

the Asset Purchase Agreement overall for the system sale; but what is being proposed is a modified payment schedule which Mr. Ferguson will describe in detail.

Mr. Ferguson stated following the selection of Aqua he has had several follow-up discussions with PFM and Mr. Wyatt. Mr. Ferguson stated he has also been monitoring the Township's financial situation for the end of the year related to COVID and other things that have been discussed over the last couple of years. He stated the issue they had was even if the Closing is finalized, it will be a year from now; and we are still faced with all of the measures for the next year particularly the 2021 Budget that would have to be addressed. Mr. Ferguson stated he had discussed pursuing as part of the transaction, a down payment on the system; and he came up with a \$3 million down payment which would be part of the \$53 million transaction. He stated Mr. Shearer and Mr. Wyatt had discussions and got an agreement on that. Mr. Ferguson stated he did include some details on that in his Report to the Board this week.

Mr. Ferguson stated while the consideration of the Budget is probably still six weeks away, there were issues with this year's Budget that he has talked about regarding the structural deficit that we have on a year-to-year basis, and that the Fund Balance number, even though it is better than originally anticipated in the spring, would still require us to address that next year.

Mr. Ferguson showed a slide indicating that the \$3 million that was successfully negotiated had one caveat. He stated in the Asset Purchase Agreement it was assumed that Aqua would pay up to \$70,000 in reimbursements for engineering and legal fees. He stated while it seems on the surface that we are giving up \$70,000 in exchange for \$3 million when you look at the impact of the \$3 million, we will be better off.

Mr. Ferguson stated it is anticipated that we will end the year with approximately \$700,000 to \$800,000 which is approximately a 5% Fund Balance. He stated as he has discussed on several occasions the Township was downgraded on our Bonds approximately a year ago. He stated the Moody's evaluation to maintain an AA Bond rating are sustained 30% plus Fund Balances. He stated a \$3 million down payment would translate to \$3.7 million to \$3.8 million at the end of the year which would hit the threshold. Mr. Ferguson stated

while that is not sustained at this point, it would be established; and he feels it is a very positive first step. He stated the Moody's Hearing will be coming up, and he feels this will show our Fund Balances are in the range that will hopefully start taking the negative outlook off of the Township's current financial standing with Bond Rating agencies.

Mr. Ferguson stated during the Budget this year, they would be discussing the need for a Tax Anticipation Note (TAN). He stated our Tax structure is such that we are primarily driven by Property Taxes, and the question is when the Revenue comes in and how much we have to sustain ourselves while waiting for that Revenue to come in. Mr. Ferguson stated it was anticipated that he would be presenting to the Board a \$2.5 million Tax Anticipation Note. He stated this is a one-year loan that is paid back, and it is usually set at the last day of the year that it is paid back. He stated there would be legal costs for the Filing, the interest rate on the TAN, and there would be interest earned on the \$2.5 million. Mr. Ferguson stated absent the \$3 million deposit, the Township would be going for a Tax Anticipation Note, and the cost of that netted out would be \$65,000.

Mr. Ferguson stated if we are running a structural deficit as he noted at previous meetings of \$1 million plus, and we are starting the year with \$700,000 to keep a 5% Fund Balance, that would translate to the need for an approximately 2 to 3 mill Tax increase for next year. He stated for a \$400,000 home that would be between \$87 and \$131 per homeowner in the Township. Mr. Ferguson stated we are also near the ceiling for the millage at 13.88 where the maximum is 14 in the General Fund, and so there would be an estimated direct cost for legal Filings associated with that in the amount of \$5,000.

Mr. Ferguson stated with regard to getting back the \$70,000 as part of the transaction, \$3 million in down payment for a year with an interest rate of .5%, which is slightly lower than we are getting at this point, would generate \$15,000 in interest. He stated we would also not have to go for a Tax Anticipation Note at a cost of \$65,000, and there would also be the offset of not having to go to Court and have the solicitor's office request going above the State cap which would be a \$5,000 savings. He stated the benefit translates to \$85,000 so giving up \$70,000 in reimbursables is offset to the benefit of the taxpayers by \$15,000.

Mr. Ferguson stated he feels that the deal that was negotiated by the team was “phenomenal,” and we will be getting \$15,000 on a give-back to get \$3 million. He stated the \$3 million deposit has a provision that it will be provided to the Township by December 15 which could then be incorporated into the year-end financials and would effect the Fund Balance and the verifications that we would need to give to Moody’s this year as part of our review. Mr. Ferguson reminded the Board that we now have an annual review by Moody’s for reasons discussed previously having been “flagged so that they keep a close eye on us.” Mr. Ferguson stated Moody’s called and requested an unannounced meeting in May because of our status and COVID and what was going on with finances, and they will follow up with another meeting.

Mr. Ferguson stated the PFM team and Mr. Wyatt are available this evening if there are any questions.

Ms. Blundi moved and Dr. Weiss seconded to reapprove, reauthorize and ratify the Asset Purchase Agreement (APA) to include a \$3 million deposit payable in December of 2020, and waive the provision related to reimbursement of up to \$70,000 in legal and engineering fees.

Mr. Grenier stated per the advice of the solicitor similar to the Sewer sale discussion, he will be recusing himself for similar reasons.

Dr. Weiss stated in getting this \$3 million he understands there would be a \$15,000 net benefit, and he asked if we will have to raise taxes next year with this \$3 million deposit; and Mr. Ferguson stated we will not. Dr. Weiss stated not only will we make an extra \$15,000, but we will also not have to raise taxes next year; and Mr. Ferguson agreed.

Mr. Lewis stated this is the first time he has seen the Agreement and he is disappointed that he did not receive it sooner and seen some of the prior mark-ups. Mr. Lewis noted Schedule 5.11. He stated Aqua does not have any litigation pending on that. He asked if the reason the County of Delaware versus DELCORA was left out was because Aqua was not currently named a Defendant, and Mr. Wyatt stated that suit is immaterial to Aqua as a firm and immaterial to this transaction and Aqua is not a Defendant in that case.

Mr. Lewis stated the Agreement does not provide the disclosure of litigation involving the Seller, and he asked if the Buyer is aware of current litigation involving the sale. He asked if that should be disclosed in the APA.

Mr. Wyatt stated when they were at the Court House, a representative from Aqua sat in the Court room, so they are aware. He noted a provision that is in the APA, so it does not need to be on a Schedule.

Mr. Lewis stated on Schedule A the Stackhouse pump station is omitted although the map indicates the Stackhouse ejector station, and he asked if there was a reason why the Stackhouse pump station was omitted from Schedule A. Mr. Ferguson stated the Schedules will be adjusted up until the Closing. He stated this is a snapshot in time that will continue to be finalized for the next year. Mr. Lewis asked if that means we are not authorizing Final approval or that the Schedules will get amended between now and then. Mr. Truelove stated the Schedules get amended. He stated he and Mr. Wyatt had a discussion with the Aqua attorneys recently, and it is normal process for any of these sales, to identify and certify the assets. He stated what is being shown is probably 90% to 95% accurate; however, until they know there is a sale no one wants to go through the time and expense of an abstractor. He stated an abstractor will be retained to go out with the help of Mr. Hucklebridge and Mr. Ebert to identify all of the assets before the Final Settlement assuming PUC approval.

Mr. Lewis stated the Agreement appears to make no requirements on the Seller to continue existing Capital projects, and he asked if that is correct. Mr. Wyatt stated anything that is required in the 537 Plan would need to continue on. He stated he believes there is a Covenant, either 901 or 903, where it indicates that the Seller is required to operate in the ordinary course from the time of signing until Closing. He stated the ordinary course would encompass O & M and ongoing Capital.

Mr. Wyatt stated he agrees with Mr. Truelove's point, and there is a provision in the APA. He stated they anticipate in the APA, that there will be a need to update the Schedules. He stated therefore periodically as they move toward Closing, they will update the Schedules to make sure they are complete and intact on an on-going basis.

Mr. Lewis stated there are no specific requirements on specific Capital projects. He stated it would just be O & M and anything required by the 537, and Mr. Wyatt agreed.

Mr. Lewis stated noted Section 8.04, and he stated if the Township is sued by another potential acquirer or other third party, the Township is responsible for any legal fees and damages, and Mr. Wyatt agreed. Mr. Lewis stated he

had asked if there was any way that we could get indemnification of that. He stated they “were not even the highest Bidder,” and he asked if would be unreasonable for them to protect the Township for that sort of circumstance. Mr. Wyatt stated it would be unprecedented for a Buyer to indemnify a Seller for improperly running a Bid process.

Mr. Lewis noted Section 15.10 and stated both parties are waiving trial by Jury, and he asked why that is in Lower Makefield’s best interest. Mr. Wyatt stated it would be in a Court in Bucks County. He stated when you are negotiating a transaction as complex and as large as a \$53 million APA sometimes there is give and take on certain individual provisions.

Mr. Lewis asked in Schedule 12.01B what specifically has to be amended with the MMA Agreement. Mr. Wyatt stated at this point that is not exactly clear. He stated they had anticipatory and due diligence discussions with each of the Bidders about the MMA Agreement to make sure that they understood it and understood our perspective. Mr. Wyatt stated nothing may have to be amended but they wanted to “leave the door open” to make sure that they were having open communication with MMA and the winning Bidder such that at the time of Closing the appropriate Contract is in the buyer’s hands.

Mr. Lewis asked if they have talked to MMA specifically about amendments to the Agreement, and Mr. Wyatt stated he has not. Mr. Lewis asked if anyone else has, and no one indicated that they had.

Mr. Lewis noted House Bill 2597 and House Bill 2746, and he asked Mr. Wyatt if he is aware of those. Mr. Lewis stated if they were enacted they would impact this Asset Purchase Agreement as both of them require a Ratepayer Referendum and one has a sixty-day effective date. He asked if those should pass quickly, how would that effect the Agreement. Mr. Wyatt stated he would not want to speculate in a Public Meeting about whether or not a certain Bill be would passed and signed into Law. He stated he has been following that Bill closely, but it would be total speculation. He stated if a Law is passed that negatively impacts this transaction, they will forthrightly and transparently deal with the consequences of that new Law and abide by it.

Mr. Lewis asked if any Board member was notified of the Township's intent to receive a structured up-front payment as that was a change in policy and no one had mentioned it until he saw the revised APA. Mr. Ferguson stated he did not notify the Board. He stated he had asked the team if this could be negotiated as part of finalizing the APA which staff was empowered to do. He stated they came back and indicated that they were willing to do a \$3 million deposit; and instead of executing the APA which he feels they were empowered to do, they stopped and brought it back to the Board to present it as an opportunity. Mr. Lewis stated his concern is that no Board member had a chance to provide any mark-up or other comments on the Agreement as far as he understands until Monday. Mr. Ferguson stated the APA went out on Friday. He stated the Board previously authorized the team to finalize it, and they did finalize it; however, because there was a change that was not contemplated, that being the deposit, they brought the full Agreement back for the Board to see with the language in it that included the \$3 million. Mr. Lewis stated he appreciates the value of that; however, his concern is that the Board did not authorize the staff to do that, and it seems that there is a disconnect as the Board did not have a chance to review the APA.

Mr. Truelove stated one of the Motions made by the Board at a prior meeting did authorize the staff to take all necessary and appropriate steps to effectuate the sale and execute documents. Mr. Lewis stated he would stand corrected if that in fact was the Motion. Mr. Ferguson stated the Resolution was to finalize all documents. He stated even with the offset of the \$70,000 there are no increased costs, and legally the answer was that they could do this; however, understanding that this has had a number of nuances, the staff and the attorneys concluded that it was appropriate to bring this back to the Board because it had not been contemplated or discussed with the Board.

Mr. Ferguson stated he had taken the initiative himself to ask staff to see if we could negotiate a \$3 million up-front payment with the intent of bringing it back to the Board. He stated he did not seek permission to do that seeing that the original discussion was to see if they would do it, and they came back with the nuance of waiving of the \$70,000 that they believe legitimately is offset; however, they still brought it back to the Board.

Mr. McCartney asked if there is a downside to doing this from a Township standpoint. Mr. Shearer stated he does not feel there is a downside. He stated Mr. Ferguson did note that if the transaction would not close that the loan would need to be paid back within ninety days, and the

Township could either use funds on hand from the deposit to pay it off, use other surplus monies, or borrow money to do that. He stated he does not know that is a downside. He stated it was noted previously about the net benefit including eliminating the need for a Tax increase for the upcoming Budget year which outweighs any risk.

Mr. Ferguson stated if that were to happen, the Township would have a majority of the money to give immediately back. He stated there is not an intent to take the \$3 million and spend it, and the intent is to take the \$3 million and set as much of it aside as they can. He stated as he noted previously, we would need a Tax Anticipation Note to assist early in the year with bill payments. He stated if the Sale did not Close, they would be taking a provision similar to a Tax Anticipation Note that they would have had to do anyway at the beginning of the year, to get that back. He stated if the deal did not close, much like we would be looking at a Tax increase for 2021, we would be looking at a Tax increase for the next year.

Mr. McCartney asked if there is a downside from a contractual standpoint. Mr. Wyatt stated he feels the biggest risk is probably with Aqua as it is unique for them to make a deposit of this size. He stated he feels the only risk the Township could run into contractually is if we were not cooperating with Aqua as they proceed making sure that they got to the PUC as quickly as they could. He stated if we were not to cooperate, Aqua could state that we were in violation of the Agreement; however he feels the team that has been compiled will do the work in an orderly fashion, and he does not feel that there will be any consequences.

Ms. Blundi asked for more information about the financial situation. She asked at the end of the year, without this, what would be the projected amount we would have. Mr. Ferguson stated there are a number of different accounts with certain monies dedicated to certain things. He stated in the General Fund it is anticipated that we will end the year with \$700,000 to \$800,000. He stated we have a structural deficit in the Township on a year-to-year basis of approximately \$1 million to \$1.2 million every year. He stated if we are starting the year with only \$700,000 and 2021 is \$1.2 million short, we would not have enough money to make it through the year. He stated if the minimum goal is to end the year with a 5% Fund Balance, we would need between \$1.1 million and \$1.5 million in additional money next year to get to the 5% Fund Balance.

Mr. Ferguson stated this has to do with what they have discussed previously that there had been a lot of support that was previously given to the General Fund from other Funds. He stated in late 2018, they did a lot of large transfers to pay all the Funds back that had negative balances. He stated because there is not money sitting in those other accounts, even to go back to that approach of financial management, there is not money there to do that any longer. He stated at this point they know exactly where they are in all of the Funds. He stated absent the \$3 million, they would be faced with a shortfall for next year.

Ms. Blundi stated the \$3 million is a deposit on the sale that theoretically will be approved. She stated should it not go through, the Township would be obligated to repay those Funds within a ninety-day window. She stated Mr. Ferguson had indicated that there would be interest earned so that should that happen, there would be money to repay the \$3 million. Mr. Ferguson stated if there is not enough money to sustain the Township through April and May when the Tax dollars come in the Township, in theory we would be “dipping into some of that money.” He stated if the deal did not close by August or September, presumably we would have recouped some of that money because the Tax money would have come in. Mr. Ferguson stated it may be possible that they would have to do a short-term loan as noted by Mr. Shearer, he feels this would be a Tax Anticipation equivalent of approximately \$500,000. He stated they would then have to financially plan around what the Tax structure for the following year would be to offset that; and if the Board decides that they do not wish to have this \$3 million deposit, we will be having the discussion in a month about doing that.

Mr. Truelove stated in the Meeting Minutes for August 12, 2020, page 71 of 72 is the language that was from the Resolution to authorize the Sale which reads, “And now therefore be it resolved the Township of Lower Makefield Board of Supervisors authorizes PFM, the Township staff, special Regulatory counsel, the Township solicitor, Township engineer, and related consultants to take all steps necessary to effectuate the award of Bid, execute, deliver, and perform the Asset Purchase Agreement and all related Agreements and documents necessary to Close the Sale of Transactions in an efficient and expeditious manner and proceed with all necessary Regulatory and related submissions necessary to effectuate the Sale.” He stated these Minutes were approved by the Board.

Mr. Robert Abrams, 652 Teich Drive, stated with regard to the interest rate, they are discussing .005 which is one half of 1%, and Mr. Ferguson agreed. Mr. Abrams stated going back to the cell tower, the constituency was promised \$50,000 a year at 2 ½% interest, and they are now at a half percent. He stated they want to borrow against the future of the community which he feels is wrong. Mr. Ferguson stated it is not a loan.

Dr. Weiss stated this is not a loan. He stated they would be getting \$3 million up-front of the \$53 million. He stated it is estimated that they would get a half percent on that money.

Mr. Abrams stated if the deal does not go through, it will be up to the community to come up with \$3 million in ninety days which they will not have. He stated there are threatening Tax increases but they never consider how much money they are wasting and how much money they have promised the community that never comes to fruition. He stated they have sold off the “historical value” of the community. Mr. Abrams stated he knows someone who rents in Heacock Meadows, and they are struggling to get \$1,500 for two bedrooms, two baths, and a garage; but they have been told that the new developer will get \$1,900 for one bedroom, one bath, and parking on the street. Mr. Abrams stated this proposal should have been put up to the public so that they could digest it. Mr. Abrams stated “Mr. Ferguson should purchase property in the Township because he is borrowing the Township into a hole.”

Mr. Ferguson stated he did receive calls today similar to Mr. Abrams’ comments to which he would like to respond. Mr. Ferguson stated there will be a Budget before the Board in approximately six weeks. He stated this is not a loan. He stated there is a \$53 million Agreement for the system, and Aqua has agreed to provide \$3 million up front. He stated objectively that \$3 million helps the Township in several areas including the Moody’s review of the Township which is forthcoming. He stated as he indicated earlier, if the Township is showing a 5% Fund Balance number this year and are presenting a 2 to 3 mill Tax increase for next year which would be needed to maintain a 5% Fund Balance, the Township will be down-graded on the Bonds.

Mr. Ferguson stated the .5% is a realistic presentation of the interest rate and is an interest rate lower than what we currently have and was used as an objective analysis in terms of offsetting the \$70,000.

He stated the goal is to be extraordinarily thorough in the review to contemplate every scenario including if the Sale does not go through, and the Township would be responsible for paying the \$3 million back.

Mr. McCartney asked the chance of the Sale not going through and that we would have to repay the \$3 million. Mr. Wyatt stated he feels it is highly unlikely. He stated a Condition of Closing is to get an Application before the PUC and accepted by the PUC; and while he does not mean to diminish that effort, one of the requirements is to prove there are substantial public benefits for the sale. He stated the arguments that he will be making in his Testimony and that Aqua will be presenting in its Testimony will be a “well-tread path.” He stated everything they will be arguing has been approved for many cases and includes improved customer service, insuring that the Capital program can move forward, etc.; and he is confident that it will be accepted.

Mr. McCartney asked the timeline for that process. Mr. Wyatt stated assuming there is a positive vote tonight, they will spend the next few months getting the appraisals done on the system; and Aqua will be doing a significant amount of work to get the Application together. He stated once it gets to the PUC it will take between nine to twelve months to get to approval. Mr. McCartney asked Mr. Ferguson if that timeline puts the Township in a better position financially not only for 2021 but for 2022 and 2023 as well. Mr. Ferguson stated this timeline is what they anticipated and that it would be a year-long timeframe to Close. He stated if it does not Close, that would happen later in the year when we would have collected the Tax money; and we would be able to repay the \$3 million if necessary. He stated from a financial perspective this timeline is just what they anticipated.

Motion carried with Ms. Blundi, Mr. McCartney, and Dr. Weiss in favor, Mr. Lewis opposed and Mr. Grenier abstained.

ENGINEER’S REPORT

Mr. Pockl stated the Board received his Report in his packet. He stated with regard to Dobry Road, the re-construction started today. He stated they anticipate approximately two weeks for that work to be completed. He stated it is from Oxford Valley Road down to the Caddis Development entrance driveway. He stated they are routing traffic through the site. He stated there was a site walkthrough last Friday with the Township traffic engineer, the developer, and the Township staff were there to outline the temporary traffic control measures.

Mr. Pockl stated yesterday they received the Preliminary/Final Land Development Applications for Prickett's Preserve and the PA American Water pump station upgrade for the property on Oxford Valley Road behind the Community Center by the water tower. He stated he will be working on those Plan reviews.

Mr. Pockl stated they met with the contractor for the Pool Complex who had put in the perimeter drain around the Olympic pool two years ago where repairs are needed. He stated there is cracking on the deck and areas where the concrete is chipping off the surface of the concrete deck which they will repair within the next few weeks. Mr. Pockl reminded the Board that there is a five-year Maintenance Plan and this work will be done by the contractor at no charge to the Township.

Mr. Grenier asked that Mr. Pockl "keep an eye on the pass-through traffic" at Caddis since they know that the neighbors are concerned. Mr. Ferguson stated we did require them and they did submit a Traffic Control Plan; and if something were to come up, what they indicated they were going to do is in writing. Mr. Pockl stated they did notify the users of Dobry Road of the timing of the work. Mr. Grenier asked if they notified the residents at Regency that back up to the road, and Mr. Pockl stated they are aware of the work.

Mr. Grenier stated there were concerns expressed about the Caddis lights, and he asked if there is an analysis on that. Mr. Pockl stated initially they took light level readings at the property line, and it was indicated that the light levels were zero. He stated a projection of light is different from light observance. He stated he understands that they have received another e-mail asking them to investigate further about lights on the building itself, and they will look into that. Mr. Pockl stated he will also talk with the manufacturer and the developer to see if shields can be placed on some of the lights; and if they can do that and still maintain a level of safety and security on site within the parking lot, we will have them do that. Mr. Pockl added that the thirty-five Green Giant arborvitae trees that were installed, due to the developer overstepping his bounds as far as the limits of disturbance, were placed at the top of the hill; and they will provide a buffer as well in years to come as they grow and fill out. He stated there is also a 25' fully-landscaped buffer on the Caddis side of the development that will be installed. He stated short of all of that, he is not sure what else could be done. Mr. Pockl stated the evidence that has been presented to the Township is that the developer is meeting the requirements of the Ordinance.

Mr. Grenier stated he understands they received the Land Development Application materials for Prickett's Preserve, and he asked if we have established a schedule yet for that. Mr. Ferguson stated the ninety-day clock has started under the MPC. He stated Escrow has been posted and all of the consultants will be given a certain amount; and they will notify the Township if the Escrow gets depleted. Mr. Ferguson stated they will also start establishing some benchmark times as to when it will go to the Planning Commission and when reviews are needed back. He stated everything has been distributed. Mr. Grenier asked if they will also get comments from the applicable Advisory Boards and Commissions to get their feedback, and Mr. Ferguson agreed.

Approve Resolution No. 2423 for the MTF Grant for the Woodside Road Bike Path Grant Application for \$453,000

Mr. Pockl stated he had discussed previously their intention to submit a Grant Application for the Multi-Modal Transportation Fund for this project, and that requires a Resolution to be passed.

Mr. McCartney moved and Mr. Lewis seconded to approve Resolution No. 2423 for the Multi-Modal Transportation Fund Grant for the Woodside Road Bike Path Grant Application for \$453,000.

Mr. Grenier asked if the Township has to put any money into this to put the Application in. Mr. Pockl stated the Township has funds that were set aside for this project previously in the amount of \$125,000. Mr. Ferguson stated there is some prep time that Remington Vernick has performed to submit the Grant. Mr. Pockl stated there is also an Application Fee of \$500. Mr. Ferguson stated there will therefore be up-front costs probably totaling a few thousand dollars. He stated with regard to the bike path, they will be proposing a match as that was the intent of the .24 mills.

Mr. Grenier asked what percentage of the overall project does the \$453,000 cover. Mr. Pockl stated the Township received a previous Grant for the design, land acquisition, and Bidding of the project; and that required a 15% match from the Township. He stated the \$453,000 is strictly for construction so they would have \$453,000 plus the \$125,000. Mr. Grenier stated the design covered all of Woodside. Mr. Pockl stated it covered the Sketch that was discussed a year ago and it goes from the driveway at the Golf Course down to the connection to the Canal. Mr. Grenier asked if it includes the eastern

portion of Woodside that is east of Taylorsville toward the Canal bridge or does it stop at the corner. Mr. Pockl stated it goes east of Taylorsville down to the Canal towpath. Mr. Grenier stated Dr. Weiss had brought up at the last meeting that they need to “keep pushing on the bridge,” and this would connect to the bridge that they are looking to get installed. Mr. Pockl stated that is language that they are going to put into the Application because he feels that is what makes this project attractive. He stated it is a key piece in connecting all of the recreational opportunities, even connecting to a bridge that goes into New Jersey.

Mr. Ferguson stated the 22% that will be the Township’s responsibility is money that is already in hand, and it was specifically set aside in the Recreation Capital Fund right now. He stated no new local Tax dollars would be required to bring this to fruition.

Motion carried with Ms. Blundi abstained.

Approve Resolution No. 2424 for the MTF Grant for the ADA Ramp Improvements Grant Application for \$307,615

Mr. Pockl stated this is for the ADA ramp improvements for roadways that are tentatively included in the next two years of the Road Program.

Mr. McCartney moved and Ms. Blundi seconded to approve Resolution No. 2424 for the MTF Grant for the ADA Ramp Improvements Grant Application in the amount of \$307,615.

Mr. Pockl stated the Township would have to complete these as part of the Road Program as PennDOT, in providing funding for liquid fuels, requires that any upgrades to roadways require them to be ADA compliant as well. He stated there are approximately thirty-two ramps, and the cost estimate is based on prices they have received over the last two years for similar work.

Motion carried unanimously.

PROJECT UPDATES

Mr. Grenier stated while it is not a Township project, he would like an update on Big Oak Road paving by PennDOT. Mr. Ferguson stated they are in the

initial stages, and the Township traffic engineer has been communicating with them. Mr. Pockl stated the project is to mill and overlay the entire stretch of Big Oak Road from Oxford Valley Road east. He stated he was in the area on Tuesday, and they were up to Stony Hill Road with the milling operation.

Mr. Grenier asked if they have to re-direct traffic, is there anything that the Township should be making residents aware of. Chief Coluzzi stated if they see any problems, they will get Officers out to the area; however, he does not anticipate any problems as PennDOT usually has a sufficient number of flaggers who usually do a good job.

MANAGER'S REPORT

Mr. Ferguson stated with Mr. Derby's passing, it is important to note that he was a public servant; and those who are in public service are often under-appreciated. He stated everyone's comments about Mr. Derby was that he was nice to everyone and he wanted to help everybody in the Township that he could which in 2020 is the "highest form of flattery." Mr. Ferguson stated that is how the staff will remember him. He stated there are a lot of heated emotions, but it should be remembered that there are people who are public servants and 99.9% of the time they are doing the very best they can to serve the people of the Township as was Mr. Derby.

SOLICITOR'S REPORT

Mr. Truelove stated there was no Executive Session held this evening.

Mr. Truelove stated he would like to echo Mr. Ferguson's comments about Mr. Derby who he had known for over twenty-five years when his sons started playing baseball when Mr. Derby was the PAA Commissioner. He stated what has been stated about him was true, and he was thinking about people almost all of the time; and the young people who worked for the Township in the summer all enjoyed being around him. Mr. Truelove stated he was also a pallbearer at his Father-in-law's funeral last year, and he was a comforting presence at that time as well. Mr. Truelove stated he will be missed, and he feels for his family given the circumstances.

Approve Resolution No. 2422 Authorizing Settlement Letter Agreement Regarding Right-of-Way Acquisition for 1355 Edgewood Road

Mr. Truelove stated the history of this dates back to 1986 and has to do with the property at 1355 Edgewood Road owned by Stephen and Helen Heinz. He stated the property was not served by public sewer, and there was a septic system. He stated in 1986 the Township filed a Declaration of Taking because it needed some of their land for possible right-of-way purposes for road improvements along Edgewood Road. He stated in 1996 a Settlement Agreement was executed between the Township and the property owners whereby the Township would acquire the right-of-way for a certain amount of money, but there was also included in the Agreement that if there was any type of non-routine maintenance along the road in the area of that property, that the property owners would be provided public sewer service. He stated last year there was a house being approved and public sewers were being provided to that house, and Mr. and Mrs. Heinz hired an attorney who brought the matter to the attention of the Township. He stated Ms. Kirk from his office was able to negotiate a Settlement whereby the Heinzes would be provided a public sewer access. He stated they also have a grinder pump. He stated in exchange for that the Township now has a free and clear Easement for the property, and a long-standing legal dispute has been resolved for the benefit of everyone.

Mr. Lewis moved and Mr. McCartney seconded to approve Resolution No. 2422 authorizing Settlement Letter Agreement regarding Right-Of-Way acquisition for 1355 Edgewood Road as described.

Mr. Grenier asked if this effects any of the neighbors as he understands that there are few properties nearby that are on septic systems. Mr. Truelove stated he believes that the properties just east to the Heinzes are connected. Mr. Grenier stated his neighbor owns 1337 Edgewood Road, and asked if he should recuse himself or is he able to vote on this. Mr. Truelove stated he believes that Mr. Grenier can vote on this.

Mr. Truelove added that the Harris property which had been considered for years to be developed was going to be the linchpin for a lot of the sewers to be connected; but over the years Applications had been considered but never pursued, so this is a good way to accomplish this without having to wait for the Harris property to be developed which may or may not ever occur.

Motion carried unanimously.

ZONING, INSPECTIONS, AND PLANNING

Defer Development Agreement for Caddis Senior Living

Mr. Truelove stated they should defer this matter to another meeting as the developer and their attorney are reviewing the Development Agreement at this time, and it is not in a position to be considered by the Board of Supervisors. He stated he anticipates that it will be ready for consideration at the October 7 meeting.

Approve Resolution No. 2425 Approving Sewage Facilities Planning Module for Caddis/Shennard

Mr. Truelove stated this should be considered by the Board this evening. He stated Mr. Majewski sent an e-mail today a copy of which he believes the Board received, which indicated that the Planning Modules were reviewed and approved by Ebert Engineering and the Planning Commission with no comments received by the public. The entire Planning Module including the Resolution will be forwarded to the DEP for approval. Mr. Truelove stated that Mr. Joe Shennard, who is the other party involved in the Planning Module, is anxiously waiting for his sewer to be connected by Caddis.

Mr. Grenier stated he wants to make sure that there is nothing in the Development Agreement that could negatively impact or change the Planning Module, and Mr. Truelove stated they do reference each other and are part of the overall finalization of the Agreement.

Mr. Grenier moved, Mr. McCartney seconded and it was unanimously carried to approve Resolution No. 2425 approving Sewage Facilities Planning Module for Caddis/Shennard.

PUBLIC COMMENT

Ms. Sue Herman, RRTS, P. O. Box 285, Newtown, PA stated at the September 10, Mercer County Freeholders' Meeting the Board approved several Airport-related Resolutions despite serious concerns expressed by citizens during Public Comment. She stated approval of these Resolutions continues the "reckless, unchecked expansion" of TTN. She stated as she has noted previously the Freeholders' actions will not only cause irreparable harm to the residents and businesses of

Mercer County but also to Bucks County residents, businesses, and communities and millions of people who get their residential drinking water from the Delaware River. Ms. Herman stated she is also concerned about the release of poisonous contaminants into the surrounding tributaries and the Delaware River, and she reviewed the harm that these contaminants cause. She stated RRTS provided written testimony during the Freeholder's Meeting on September 10, 2020, and she reviewed the information that was provided to them. Ms. Herman thanked the LMT Board for the submissions that they provided. She asked that the Board read the Testimony and comments which she will attach to her written comments for tonight's meeting. She asked that the LMT Board send a formal written communication to the Executive Director of the DVRPC stating that they oppose all current and proposed expansion/renovation projects at TTN and ask the DVRPC to re-examine its plans to make TTN a "booming airport," and re-prioritize the importance of clean water to the region as one of the primary goals. Ms. Herman stated she will submit her public comment via e-mail to Dr. Weiss and the full Board of Supervisors, Mr. Truelove, and Mr. Ferguson and asked that the addressees acknowledge receipt of the e-mails during the meeting and that the e-mails and all attachments be included in the Public Record for tonight's meeting.

Mr. Fred Childs, 1345 Lexington Drive, thanked Mr. McCartney and Ms. Blundi for their thoughtful deliberations during this year's proceedings on the Sewer system and the Overlay Zoning issues. He stated they have demonstrated their dedication to making decisions for the long-term beneficial interest of the Township's financial health which is their primary duty along with what they see as the best long-term interest of the majority of residents. He stated both Supervisors care deeply about Lower Makefield, are well respected in the community, and have volunteered over many years for various local sports teams and other community activities. He stated as Supervisors they, and the others on the Board, spend countless hours in meetings, events, preparation, and responding to constituents while pursuing their professional careers and family lives during these difficult times. He stated both Supervisor Blundi and Supervisor McCartney have been serving the community with integrity and distinction, and they should be respected for that.

Mr. Childs stated it is "shameful" that some are attempting to unjustly "smear and denigrate their character." He stated it is a fact that a large majority of the contributions to the Blundi and McCartney Campaign were from residents and from the two candidates' friends, family members, and themselves, none of whom had any business before the Township. Mr. Childs stated under current Law it is the right of every individual citizen to contribute to any candidate or any duly-

registered Political Action Committee (PAC) as they choose within the limits of the applicable Campaign Finance Laws. He stated it is “disingenuous to insinuate or allege” that Supervisors Blundi’s and McCartney’s work and decisions on this Board have been unduly influenced by someone who donated some lesser amount to some other PAC or that they are not properly and responsibly performing their official duties on behalf of the Township and their constituents, the residents. Mr. Childs stated if you want to prevent or limit specific individuals rights to make political contributions, then you should change the Campaign Finance Laws.

Mr. Robert Abrams stated when Mr. Lewis was asked about his Campaign contributions he knew everyone who contributed to his Campaign which any “good elected Official should know; but apparently Mr. McCartney and Ms. Blundi did not know and did not care.” Mr. Abrams stated the “money from the Overlay in the Campaign Report signed by Cynthia Weiss that he saw apparently all came out of Ivyland where DeLuca is.” He stated “Ivyland bought and paid for Lower Makefield Township because they do not want the garbage that they are bringing into Lower Makefield Township in Ivyland.”

Mr. Abrams stated since the “day Mr. Ferguson walked in, the residents of the community have continued to lose goods and services.” He stated everything that is being done is costing the residents in money, in historical value, in property value, and in community pride. Mr. Abrams stated he “does not consider any of that to be any reason for him to stay here anymore.” He stated the Township Manager is to improve the quality of the lifestyle of its residents. He stated from having a recycling yard operating for the benefit to the residents, it is now open “whenever you feel like it and not very much.” Mr. Abrams stated it is a “disservice to the community at this point.” He stated now they are borrowing money again. He stated we were “better off when we could not borrow money anymore and that way they would not dig the hole any deeper.” Mr. Abrams stated he does not feel Aqua is getting “into this deal” for the benefit of Lower Makefield. He stated “they did not post it, and did not give the opportunity for Public Comment to it, and did not give the public the opportunity to digest it.” He stated this is the problem with the transparency of the Board of Supervisors Chair. He stated Ms. Blundi and Mr. McCartney “follow his lead.” Mr. Abrams stated the amount of money that they received was “astronomical from what he saw.” He stated he saw a contribution from someone in New Hope who has not lived here in twenty-five years and he knows him personally. Mr. Abrams stated “it is a disgrace what is going on here.”

Mr. Abrams stated Dr. Weiss needs to leave because he does not own any property, and Mr. Ferguson needs to go for the same reason.

DISCUSSION ITEMS

Dr. Weiss stated he received an e-mail from Lisa Gage which he read into the Record as follows: "I connected with Helen Heinz of the LMT Historical Commission regarding the upcoming ceremony at the Slate Hill Cemetery on September 26 and how the African Museum of Bucks County will be using her research on the African American soldiers buried there to produce a video. The AAMBC is requesting a small donation toward the cost of the video. As it is an LMT/Historical Commission event, it would be good programming for the LMT Cable Government access channel and for the community tab on the LMT Website. The goal of this mini-documentary is to have wide distribution in the Bucks County School systems as part of their history curriculum. The video would also be on the AAMBC Website, infoAAMBC.org, the Visit Bucks County Website, and linked to the Township and social media outlets if desired. There would be an acknowledgement thanking the LMT Historical Commission and the Board of Supervisors at the end of the video in the credits. The AAMBC is a 501C3 Registered non-profit organization, and they are incurring some huge expenses to renovate their new building that was leased to them by the County. We will be interviewing a few African-American Vets from the area prior to the 1 p.m. start as well as a few local students and young adults from the area. The idea is to break up the stories with some comments from the present-day people. I think it is an opportune and especially timely moment to establish a partnership between the Museum and the Township. According to Dr. Heinz and the Historical Commission, there is a lot more African-American history in Lower Makefield Township including Abolitionist meeting locations, underground railroad locations, free black men's houses, etc. which may be spotlighted by the Museum in the future. The Museum is to uncover the untold stories of African-Americans in Bucks County and there are many of them to tell. The amount of this request is for \$500, and it is my understating that it or a portion of it may be able to be funded by the Historical Commission's small Budget. Thank you in advance – Lisa Gage."

Dr. Weiss stated he did send a message out last week to the Board to see if they would be willing to authorize up to \$500 to help the AAMBC fund this video.

Mr. McCartney moved and Ms. Blundi seconded to approve not to exceed \$500 to the AAMBC to help fund the video.

Mr. Grenier asked Mr. Ferguson if he would have a recommendation as to how they would fund this adding he does think it is a good idea. Mr. Ferguson stated they do Budget various amounts of monies for various Committees, and the amount for the Historical Commission is \$500. He stated the year-to-date on that is \$138 so there would be a difference; however, he does not feel it would be a problem to go over by that, and it would be easily absorbed. Mr. Grenier stated he assumes he will determine where it will come from, and Mr. Ferguson stated he would advise the Board of where it was from during the Budget time when they are reviewing the year-to-date figures.

Motion carried unanimously.

SUPERVISORS REPORTS

Mr. Grenier stated the Electricity Reliability Committee Chair wrote a letter dated June 3, 2019 which he could distribute, and it gives a history of the ERC including their goals and suggestions for specific topics that were discussed in 2019. He stated they also copied Representative Perry Warren who responded with a note which he can also provide. Mr. Grenier stated there were a number of comments and concerns when they did the last ERC interview as well as a few comments on Facebook about Hidden Oaks. Mr. Grenier stated he retrieved data from PECO on the Hidden Oaks development from Super Storm Sandy forward. He stated during Sandy Hidden Oaks was without power for four straight days, and post-Sandy there were two outages in March, 2018, as well as three outages this year. He stated PECO has indicated that in 2020 they have done a fair amount of tree trimming and are replacing equipment in the area so hopefully service will be better.

Mr. Grenier stated for anyone who has an interest in looking at their outage history, you can get that information from PECO; and he would be willing to help anyone to get that information.

Mr. Lewis stated the Historical Architectural Review Board met on September 14 and completed their review of 1674 Edgewood Road/demolition of the Quill House, and they voted unanimously to reject that proposal. Mr. Lewis stated the Zoning Hearing Board met last night and was able to amicably resolve Appeal #19-1846 which has been a long-standing Appeal from 2019. He stated they were also able to resolve two pools and a fence issue for other members of the community.

There being no further business, the meeting was adjourned at 9:21 p.m.

Respectfully Submitted,

James McCartney, Secretary