

LOWER FREDERICK TOWNSHIP – Ad Hoc Ordinance Committee

Meeting Minutes of February 10, 2022

Meeting called to order at 7:00 pm.

Present for Roll Call:

Members:

Dyanne Jurin

Warren Jacobs

Ranier Keown

Associated Township Staff:

Mark Hudson, Township Manager

Notes:

The meeting was held in person at the Lower Frederick Township Building and on Zoom.

1. Approval of the Minutes from the January 18, 2022 meeting

Motion: Warren Jacobs

Second: Dyanne Jurin

The motion passed unanimously.

2. Public Comment

No public comment was offered.

3. Definition of “Woodlands”

Dyanne Jurin feels it's important we get a good definition to clarify for residents whether they have individual trees or woodlands that would be governed by this ordinance. She also re-iterated the need to change the definition from caliper to DBH.

Ranier Keown thinks the definition is ok as is but is open to further discussion if others have suggestions to improve it.

Warren Jacobs doesn't have a problem with the definition. It is short and simple which makes it easier to understand and enforce. But we should add the word “plant community” because it's not just about protecting trees, but the area of land that contains the interconnected system as well. We should also come up with some wording to further classify the different types of woodlands including those with higher ecological value.

Dyanne Jurin explained it's important for landowners and developers to know how the trees and woodland on the property is defined and impacted.

Dyanne Jurin questioned whether the ¼ acre of woodland must be on one property or whether it could be made up of smaller sections on more than one connected properties.

Mark Hudson clarified that it must be on one property. The requirement only pertains to woodlands on an individual property regardless of what they are connected to on adjacent properties. Mark Hudson previously clarified this point with the Solicitor.

Warren Jacobs reminded us that the ordinance applies to the original piece of land prior to subdivision. The percentage of preserved woodlands would apply to the total woodland area on the original property including smaller sections of woodlands that might remain on individual lots if these were in the woodland calculation for the original property.

Warren Jacobs will prepare a revised definition of woodlands for review at the March meeting that considers the points discussed above.

Warren Jacobs suggested we table the discussion of heritage tree requirements for a future meeting because it is a big topic, and something that we must address thoroughly because people are concerned about it.

Dianne Jurin read the specific question related to heritage trees and the Solicitor's response:

The question was: *If a resident wants to cut down a heritage tree for the point of say building a garage who do they need to get permission from?*

Peter Nelson responded: *So long as the resident is not undertaking a land development or subdivision (as defined in the SALDO), there is no specific prohibition to his/her cutting down a heritage tree. The only provision that applies is the following:*

Heritage Trees shall be preserved and protected to the greatest extent feasible, as determined by the Township Engineer.

So, the Township Engineer would have the discretion as to whether or not the resident is protecting this Heritage Tree to the greatest extent feasible. Where a land development/subdivision is occurring or proposed, Heritage Trees can only be removed if they constitute a hazard as determined by the Township (staff and consultants).

Dyanne Jurin explained that if it's your property and you have a heritage tree and you're not doing any SALDO, then you don't need to ask anyone for permission to remove a heritage tree. If you're building a garage or other SALDO, then you need to ask the Engineer.

Ranier Keown agreed that is what the Solicitor said in his email response, but then the heritage tree requirement should be in SALDO and not zoning. The Solicitor's email response says it can be cut down for any reason if you're not doing development. If that's true, then it's not a zoning requirement.

Warren Jacobs expressed that the Solicitor previously said that SALDO requirements are not enforceable unless it's also in the zoning requirements.

Ranier Keown stated that if the Solicitor's email response is correct, then the ordinance should be clarified to reflect that. The current ordinance says "all uses and activities" are governed by the heritage tree requirements, and not just SALDO. If that isn't the case, then the ordinance should be revised. The current ordinance language does not match the Solicitor's email response.

The committee agreed that the heritage tree requirements need further clarification as to whether a property owner that is not doing subdivision or land development must get approval from the Township Engineer to remove a heritage tree.

4. Percentages of Permissible Tree Disturbance

Dyanne Jurin presented a summary of Woodlands Zoning calculations for minor subdivisions, subdivisions, and homeowner building or grading on their land. The chart shows the impact of this current ordinance for these categories if there is no woodland, 25% woodland, 50% woodland, or 100% woodland at 1, 2, 10, or 100 acre size plots. The summary is attached as Appendix A.

Dyanne Jurin described an example of a 1 acre fully wooded lot, and that 50% clearing is plenty of buildable area.

Ranier Keown interjected that the ordinance states you must put 30% back so ultimately you only have 20% cleared.

Mark Hudson said you don't need to put 30% back. The 30% is multiplied by the 200 trees per acre to determine how many trees you need to put back, but it doesn't need to be the full area that was removed over 20%.

Dyanne Jurin said that she interprets the 30% requirement based on area, and if you remove any area of woodlands over the 20%, the same area would need to be replanted somewhere else. She also said that a 20% clearing might be enough to build on. Or you can remove up to 50% and reforest the 30% somewhere else.

Warren explained that the concerns with this ordinance are for existing property owners and smaller lots, and not about large developments. The numbers were derived by copying other municipal ordinances and we don't know how they were determined. Since the percentage of woodland is being questioned, we need to get some professional help to determine what is a practical percentage that still allows for a typical building lot and related usage. In the past, it was not an issue. We have many R1 and R2 lots with homes and septic systems and plenty of remaining tree canopy. If these people wanted to cut down more trees, they would have. What is a baseline from what we've already done that we can use to come up with the right number for the ordinance?

Ranier Keown said these examples of existing wooded lots show why this requirement isn't necessary for individual landowners and should focus only on developers. People that have trees, want their trees. The real issue is with large developers, but existing property owners are getting wrapped into it.

Warren Jacobs reminded us that the Solicitor said it must be in zoning and apply to everyone or we can't apply it to a developer. Therefore, we must come up with the correct percentage that we never needed in the past.

Bryan Hill (11 Zieglerville Road) questioned whether 80% tree coverage is realistic and feasible for a building lot considering necessary space for a driveway, sewer system, tool shed, etc. If you decide to remove more and replace them somewhere else, where do you put them and what does that cost. We need to be reasonable. He suspects no one sitting at the table meets these standards today, but we want to hold others to this standard.

Mark Hudson described a recent property on Fulmer Road that took down about 40,000 ft² from a 3 acre lot for the driveway, house, septic, and stormwater.

Warren Jacobs explained this was prior to the ordinance effectivity and they only cleared what they needed.

Mark explained his understanding that if you removed 50% of the woodlands from a 1 acre fully wooded property, you would need to replace 60 trees (30% x 200 trees per acre). It has nothing to do with area of the woodlands removed.

Ranier Keown read this portion of the ordinance and pointed specifically to the requirement to replace acre for acre anything removed over 20%. If you remove 3 acres over the 20%, then you must replant 3 acres. It's important that we have the same understanding of these requirements but that's still not the case. I think it says that if you have a fully wooded lot today, it will always be 80% wooded no

matter what you want to do with it. It will always be 80% wooded unless you can put them on someone else's property.

Mark Hudson agreed to investigate this 30% replacement requirement further to make sure it is clear.

Warren Jacobs said the Fulmer property mentioned earlier was a reverted field with smaller cedar trees. This was not woodlands, and in theory could have been cleared completely. 30 years ago, there were no trees there. It was a farm field.

Ranier Keown suggested that the value of the example from Mark was that it took about an acre to put a home and related infrastructure on the property regardless of whether this particular property had woodlands.

Mark Hudson said the point is to make the woodlands requirement more lenient for regular day to day uses on existing properties. You could increase the size of the woodlands from a ¼ acre to make it less restrictive on existing lots. You could also only apply the woodlands section only when a person clears enough area to require an NPDES permit (1 acre). Anyone building an individual house or similar project doesn't want to get involved with the state and do an NPDES permit so this would limit the requirements to larger projects. You can also change the percentages from 20 to 40 for example.

Dyanne Jurin questioned whether the requirements can vary by lot size. For example, anyone developing or building on something over 10 acres must abide by the current requirements, but lots smaller than 10 acres could have a larger percentage. But ultimately our woodlands need to be protected and that's what this ordinance was intended to do.

Warren Jacobs suggested that exceptions should be based not on acreage, but on the class and quality of the woodlands. We care less about low value woodlands compared to virgin woods. He will include this distinction in his proposed woodlands definition next meeting.

Ranier Keown expressed that if the development potential of a property has been exhausted then it's fine to restrict large scale removal of remaining woodlands. However, if the property has further subdivision or development potential and you're not allowed to remove additional trees, then the property can't be used for anything else. If you're not allowed to clear more area, then it has no further potential use. The monetary value of that land is essentially nothing because it must remain wooded.

Warren Jacobs explained that if you subdivided the property, then the new individual lot would have their own percentage of allowable woodland removal.

Dyanne Jurin clarified that the ordinance puts qualifiers on the land preventing additional woodland removal for the rest of its existence.

Warren Jacobs expressed concern about developers defining how many lots they're entitled to. Perhaps we should consider heritage trees or woodlands as an additional EAF (environmental adjustment factor).

Ruth Heil (204 Swamp Creek Road) suggested that the 20% limit as described in the ordinance may be an unintentional error. She feels that 50% can be removed without restriction as long as it isn't an environmentally sensitive area (i.e. floodplain, etc.). She feels it isn't worded correctly and this may be the catching point.

Chuck Yeiser (Supervisor) expressed that he spoke with the author of the ordinance before the Supervisors voted and confirmed that it is worded as the author intended. Only 20% can be removed without tree replacement even if it's not considered an environmentally sensitive area.

Bryan Hill (11 Zieglerville Road) questioned whether we can use the recent subdivision as an example to see how the ordinance will impact future subdivisions? Can we not use this example to help us navigate this before we start making decisions that will severely impact property owners and essentially make some property unbuildable?

Dyanne Jurin indicated that properties that are subdivided under this ordinance cannot be subdivided again.

Ranier Keown explained that the ordinance doesn't specifically restrict further subdivision, but the limitation on further tree removal does make further subdivision less feasible.

Warren Jacobs stated that if you own a wooded property and you'd like to further develop it in the future, then don't remove the 20% of woodlands so that allowance can be used in the future.

Mark Hudson explained that older lots didn't need stormwater, or in a development the stormwater is all together. When you have an individual lot with a single home, you must do stormwater on the lot. And in reality, on a wooded lot you need to clear trees to build the stormwater infrastructure even though that's counter-intuitive to woodlands helping with stormwater. Individual lots are held to the same stormwater standards as large developments. The lot on Fulmer Road was able to fit a home, stormwater, driveway, and septic on just under an acre of cleared area. If the ordinance applied only after an acre was cleared, it would accommodate the typical clearing required for a normal residence.

Ranier Keown suggested that perhaps we say that each lot regardless of size can clear an allowable area for a typical residence. If someone does that on a large lot and decides to subdivide off another lot in the future, then that new lot which is completely wooded today would have the same allowed area of clearing once it is split off.

Mark Hudson said this type of restriction on developers isn't uncommon. He described a situation from another township where a developer owed 1200 trees for planting somewhere else in the township. They were allowed to cut the woodland but had to pay for replacement trees. The committee acknowledged that this approach isn't ideal since the trees were removed, but it does provide some disincentive and compensation for removing woodlands. Mark Hudson reiterated that the desire is to protect the little guys.

Ranier Keown agreed but added it's also about the undeveloped woodland owned by township residents whose value is significantly reduced by this restriction. We should try to protect the trees, but not make wooded properties worthless overnight.

Warren Jacobs explained that individual wooded lots can be worth more than farm field lots. But developers are less interested in wooded properties because they are usually in the diabase areas, and they cost more to develop. Now things have changed. First, we passed neighborhood lotting which allows developers to more easily utilize properties that would have been challenging in the past. Second the value of land has escalated to the point where developers are willing to do more site work on rocky and wooded land like what happened at Arcadia.

Dyanne Jurin said the ordinance does require afforestation up to 25% for farm fields. This is different than having to keep 80% of woodlands on wooded properties. She also reinforced the value that woodlands provide for all of us, to which Ranier and Warren agreed.

Ranier Keown suggested we agree on a percentage of clearing that is reasonable for a typical home. If it's one large property today, they can remove that percentage. If a smaller lot is subdivided off in the future, they can remove that percentage. That would prevent the largescale removal of woodlands like occurred at Arcadia, but also provide some flexibility for wooded lots to be used in the future.

Dyanne Jurin expressed concern about incentivizing large lot owners to remove trees now because of the ordinance.

Ranier Keown asked that we should not make trees a detriment to landowners. We don't want people to resent their trees. They've chosen to keep them so far. For example, there are sections of woodlands that are all dead ash. People would normally let that area go and it would reforest on its own. But if they know that once those trees come back, they can't remove them, some will choose to mow that area and keep it clear until they decide if they want to use it for something. We don't want that. We shouldn't make trees a bad thing for property owners.

Warren Jacobs suggested we ask the Township Engineer what area is needed for a typical home with today's stormwater requirements.

Mark Hudson explained that he got the 40,000 ft² from the engineer. That's what was cleared on the Fulmer Road property and there isn't much extra grass in the yard.

5. Replacement tree diameter, density, and alternatives

Mark Hudson got the following prices for various sized silver maples from a local nursery:

- \$165 for 1.5"
- \$210 for 2.5"
- \$345 for 3.5"

He also explained that 3.5" trees are hard to get, and the selection is not as good.

Warren Jacobs clarified that the real reason to include tree replacement requirements in the woodlands section is not to plant a bunch of 3.5" trees. Our goal is to disincentivize developers from removing trees unnecessarily. We want the disincentive to be as high as possible and that's why we required larger trees.

6. General Discussion

Dyanne Jurin questioned if the Arcadia plan would have been different under this current ordinance. Mark Hudson explained that developers will pay for the replacement trees. It will limit what they can remove, but they won't be disturbed about replacement trees. The 5 year requirement in the SALDO section should prevent a developer from clearing the lot before they officially own it like was done at Arcadia.

Dyanne Jurin questioned whether the ordinance should consider just trees or include bushes also.

Gary Bonner (Fulmer Road) stated that another possible deterrent would be to require developers to post a bond that could be used if there was a violation of SALDO tree requirements. This could be a significant deterrent.

Mark Hudson said that allowing up to an acre of clearing for a single lot would alleviate most of the concerns.

Warren Jacobs said he would be ok with that approach. Most people will only remove what they need to. People are worried about individual lots. People aren't concerned about developers.

The committee agreed that we need to ensure the requirements are clear and understood. The verbiage needs to say what we mean and be understandable for everyone. That's not always the case with the current document.

Ranier Keown said he is encouraged by the idea of a percentage per lot rather than a percentage for a piece of property that stays with that property forever. If someone splits a piece off of a large property, then they can clear a percentage of that second lot also. That allows for some flexibility and future use of larger wooded properties. Now we need to figure out what that allowable percentage or area per residence should be.

Dyanne Jurin said then if a large lot is subdivided in the future, that same percentage would apply to the new lot.

Warren said he is fine with that approach because historically anyone that is not a major developer is not cutting down more than they need. We don't have to beat people up to do that. We just have to have the stuff on the books for developers.

Dyanne Jurin said we don't want to make the allowable clearing so large that people who don't want trees buy wooded land knowing they can remove them anyway. We want people to keep their trees.

Bill McGovern (Memorial Drive) said we are circling back to the whole purpose of the ordinance which was to control large developers.

Mark Hudson will lay out some scenarios using 40,000 ft² for the next meeting.

7. Public Comment

Ruth Heil (Swamp Creek Road) thanked the committee. She also said we don't know what people will do in the future. She would support different requirements relative to the type of sewer. She has a large on-site system that takes up a 1/2 acre. She suggests that we consider different measurements for public sewer vs. on-site sewer. She also suggests any exceptions only apply to home building and not other reasons. She supports Warren's suggestion to add more details regarding environmentally sensitive areas to the woodland definition (i.e. continuous woodlands, diabase, maturity of woodlands, etc.). She suggests that we consider the canopy as much as the tree size. The canopy is what is most significant to preserve.

8. Next meeting - March 10, 2022 at 7:00 pm.

Appendix A:

Summary of Woodlands Zoning Calculations

Provided by Dyanne Jurin for discussion

ORDINANCE PERTAINS TO DEFINED WOODLANDS, NOT INDIVIDUAL TREES ON A LOT

Type	Devel. Size	Woodland Amt.	Woodland Removed	SALDO	ZONING	LOSS OR GAIN
		% OF LOT THAT IS WOODLAND	% OF WOODLAND REMOVED	AFFOREST UP 25% OF LOT	REFOREST WHEN OVER 20%-50% OF WDLAND REMOVED	(+) OR (-) TOTAL WOODLAND OR NO CHANGE-NC
SUBDIVIS (> 2 LOTS)	10 ACRE	NONE	NONE	2.5 ACRE	N/A	(+) 2.5 AC.
	100 ACRE	NONE	NONE	25 ACRE	N/A	(+) 25 AC.
MINOR SUB (1-2 LOTS)	1 ACRE	NONE	NONE	N/A	N/A	NC
	10 ACRE	NONE	NONE	N/A	N/A	
	100 ACRE	NONE	NONE	N/A	N/A	
SUBDIVIS (>2 LOTS)	10 ACRE	25% WD LD 2.5 ACRE	NONE	N/A	N/A	NC
SUBDIVIS (>2LOTS)	10 ACRE	25% WD LD 2.5 ACRE	20% OF 2.5 .5 ACRE	(2:1) .5AC. REFOR 1 ACRE	N/A	(+) .5 ACRE
MINOR SUB (1-2 LOTS)	1 ACRE	25% WD LD 10,890 SQ FT	20% 2,178 SQFT	N/A	N/A	(-) 2,178 SQ FT
	10 ACRE	2.5 ACRE	.5 ACRE	N/A	N/A	(-) .5 AC.
SUBDIVIS.	10 ACRE	25% WD LD 2.5 ACRE	40% OF 2.5 ACRE 1.0 ACRE	(2:1) 1AC. REFOR 2 AC.	20% OF 2.5 ACRE .5 ACRE	(+) 1.5 ACRE
SUBDIVIS.	100 ACRE	25% WD LD 25 ACRE	40% OF 25 ACRE 10 ACRE	(2:1) 10AC REFOR 20 ACRES	20% OF 25 ACRE 5 ACRES	(+) 15 ACRES
MINOR SUB (1-2 LOTS)	1 ACRE	25% WL 10,890 SQ FT	40% 4,356SQ FT	N/A	20% 2,178 SQFT	(-) 2,178
	10 ACRE	2.5 ACRE	1 ACRE	N/A	.5 ACRE	(-) .5 AC
SUBDIVIS.	100 ACRE	100% WD LD 100 ACRE	50% OF 100 AC. 50 ACRE	N/A	30% REFOREST 30 ACRES	(-) 20 ACRES

Appendix A:

Summary of Woodlands Zoning Calculations

Provided by Dyanne Jurin for discussion

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NEIGHBORHOOD LOTTING	100 ACRE 75% MUST REMAIN	100% WOODLAND 100 AC	25% OF 100 25 ACRE	N/A	5% REFOREST 5 ACRES	(-) 20 ACRE
HOME OWNER BUILDING GARAGE, BARN, ADDITION	1 ACRE 10 ACRE 100 ACRE	TREES, BUT NO WOODLAND. TREE COVER AND AREA MUST MEET DEFINITION	CAN REMOVE IND. TREES TO BUILD	N/A	N/A	
HOME OWNER BUILDING ADDITION GARAGE ETC.	1 ACRE	50% WL 21,780sf	20% 4,356 SF	NO AFFOR. BUILDABLE AREA WILL BE: 26,136	N/A	(-) 4,356
	2 ACRE	43,560sf	8,712 SF		N/A	(-) 8,712
	10 ACRE	5 ACRE	1AC		N/A	(-) 1 ACRE
	100 ACRE	50 ACRE	10 ACRE		N/A	(-)10ACRE
HOME OWNER BUILDING HOUSE, GARAGE, ADDITION	1 ACRE	100% WL 43,560SF	50%REMOVED 21,780 SF	NO AFFOR.	30% REFOREST 13,068 SF	(-)8,712SF
	2 ACRE	87,120 SF	43,560 SF		26,136 SF	(-)17,424
	10 ACRE	10 ACRE	5 ACRE		3 ACRE	(-) 2 ACRE
	100 ACRE	100 ACRE	50 ACRE		30 ACRES	(-)20ACRE

1 ACRE - NO WOODLANDS 43,560 SF BUILDABLE

1 ACRE - 50 % WOODLANDS 21,780 OPEN LAND
 20% REMOVE 4,356
 26,136 SF BUILDABLE
 30% ADDITIONAL 6,534
 32,670 SF BUILDING AREA, MUST REFOREST 6,534 SF

1 ACRE - 100% WOODLANDS NO OPEN LAND
 20% REMOVE 8,712 SF BUILDABLE
 30% ADDITIONAL 13,068 SF ADD.
 21,780 SF BUILDING AREA, MUST REFOREST 13,068 SF

2 ACRE - NO WOODLANDS 87,120 SF BUILDABLE

2 ACRE - 50% WOODLANDS 43,560 OPEN LAND
 20% REMOVE 8,712
 52,272 SF BUILDABLE
 30% ADDITIONAL 13,068 SF ADD.
 65,340 SF BUILDING AREA, MUST REFOREST 13,068 SF

2 ACRE - 100% WOODLAND NO OPEN LAND
 20% REMOVE 17,424 SF BUILDING AREA
 30% REMOVE 26,136 SF BUILDING AREA, MUST REFOREST 26,136 SF