

# LOWER FREDERICK TOWNSHIP – Ad Hoc Ordinance Committee

## Meeting Minutes of April 14, 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. Public Comment

No public comment was offered.

### 2. Approval of the Minutes from the March 10, 2022 meeting

Motion: Dyanne Jurin

Second: Warren Jacobs

The motion passed unanimously.

### 3. Definition of “Woodlands”

Dyanne Jurin opened the discussion by referring to the modified definition she emailed to the group including the addition of “plant community” as was suggested by Warren Jacobs in his comments included as Appendix B. She read her proposed definition that is included in Appendix C.

Warren Jacobs reviewed the current ordinance that describes different requirements for “woodlands in environmentally sensitive areas”, and for “other woodland areas”. He doesn’t want to over complicate it, but he does want to differentiate between different classifications of woodlands within the definition.

Dyanne Jurin referred to the importance of diabase areas described in other L.F. Township documentation, but questioned if it belongs specifically in the woodlands definition.

Warren Jacobs would like to add the two classifications of woodlands currently described in the requirements into the definition as well. He expressed that it may be redundant, but that’s ok as long as there isn’t a conflict between the two.

Ranier Keown said you could create two different woodlands definitions to cover the two classifications as Warren suggests, and then just refer to them by title in the requirements and not need to describe them in detail at both places in the ordinance.

Warren Jacobs expressed there are advantages to being redundant to make sure people will see it regardless of where they look. This is very important because it has a big impact on the percentages. He also doesn’t want to over-regulate areas that aren’t important. That’s why we should exempt reverted fields like the Kennett Square ordinance does.

Ranier Keown expressed some concern about how we define a reverted field since almost all woodland areas were once cleared for some type of agriculture in the past.

Warren Jacobs clarified that he would say “reverting field” and put a tree size requirement on it. He would also be ok with increasing the size from 6” in the woodlands definition, and in the SALDO requirement to show 8” and larger trees on the plan rather than 6” as the current ordinance requires.

Dyanne Jurin described a situation where old woodlands can die for some reason and then the smaller trees would be all that’s left. Some local ordinances go as small as 5”. She doesn’t want to exclude younger woodlands that are regenerating, but she will go with whatever the group feels is right on this issue.

Ranier Keown questioned the need for the 5 year retroactive addition to the zoning definition of woodlands. He explained that this makes sense in the SALDO ordinance where the requirements don’t apply until you are doing SALDO. Therefore, we want to look back to make sure someone doesn’t clear trees prior to beginning the SALDO process to get around the requirement. However, the zoning requirements always apply to everyone on every day regardless of whether you are doing SALDO. The zoning requirements always apply. Therefore, he doesn’t feel like the 5 year retroactive language is necessary in zoning because the zoning requirement is constant.

Dyanne Jurin suggested that this question be posed to the solicitor for clarification.

Warren Jacobs reminded the group that we cannot prevent someone from logging their property. The ordinance mentions a timbering ordinance that we don’t have. The 5 year retroactive part of the definition is intended to address past logging.

Kenneth Quay (2<sup>nd</sup> avenue property impacted by this ordinance) expressed concerns about the ash borer situation. Dyanne Jurin redirected the conversation back to the woodlands definition.

Ernie Schmitt (Memorial Drive) brought up the pending zoning hearing board discussion of a property that needs relief from the current ordinance. Dyanne Jurin redirected the conversation back to the woodlands definition.

Dan Orfe (Supervisor) prefers a single woodland definition, and it may unnecessarily complicate this by defining woodlands in two different ways.

#### **4. Percentages of Permissible Tree Disturbance**

Dyanne Jurin referred to the proposals from Ranier, Peter, and herself regarding this topic. The proposals from Peter and Dyanne are included as Appendix C. She expressed that the need to protect woodlands goes beyond the development situation that occurred at Arcadia. Many existing township documents (stormwater management, comprehensive plan, open space plan) speak about the importance of woodlands. A 1/4 acre of wooded land will release 188 gallons from a 1” rainfall. A 1/4 acre parking lot will release 3000-4000 gallons. That is very significant considering recent problems with flooding, impaired streams, etc. This isn’t just about curbing development. It’s about all of us taking responsibility and being good stewards.

Dyanne Jurin described some specific examples from her sliding scale proposal. For smaller lots, she explained that you may need to build a 2 story house to get the square footage that you want instead of one big impervious surface. Up to 10 acres you can take out 25% of the woodlands with no replacement. That’s a lot of building area and would save a lot of trees.

Warren Jacobs questioned where the numbers came from.

Dyanne Jurin said it was based on what she has been hearing from everyone and some input from Natural Lands regarding what they've seen throughout the area. She said it may not be your dream home, but maybe it's a smaller downsized home in the woods.

Warren Jacobs described that the new stormwater regulations request the use of natural features where possible rather than man-made BMP's. Dyanne Jurin said the state is saying to leave the trees because the man-made BMP's aren't working as well as initially thought.

Ranier Keown said everyone agrees with the importance trees and woodlands. Our job was to balance that importance with private property rights. We were given a specific mission and we agreed on what our goals were at the first meeting. I understand that evolves and we can change, and we all have our personal goals in addition to the overall goals. That's the challenge that we face to come up with the right balance. He asked to present a table that might help compare the different proposals.

Dyanne Jurin reminded the group that many people support these requirements, and it is reinforced by other township documents. We can't stick our heads in the sand. She expressed that she has gone beyond the three goals that I documented.

Warren Jacobs said one goal is to do what we want to protect woodlands without compromising the average person's property rights and restricting what they can do. That goes back to the discussion of the look-back period. You can't restrict timbering, but timbering doesn't destroy the woodlands. The remaining trees continue to grow and provide the beneficial functions of woodlands.

Ranier Keown presented his comparison table included as Attachment D. He expressed that the primary goal is to prevent what happened at the Arcadia subdivision. Specifically, to restrict the random and widespread deforestation done by developers before and during neighborhood lotted development. The second goal was to minimize the impact on private property owners not engaged in SALDO. He expressed that this requirement wouldn't be in zoning at all if it could be enforced in SALDO. The intention wasn't to impact anyone who wasn't doing SALDO, but we had to some degree. However, we should try to minimize that impact. Thirdly, it should be simple and understandable.

Warren Jacobs reiterated the importance of being simple and understandable.

Ranier Keown then explained the achievement ratings on his document. He feels that all three ordinances (current, Ranier's proposal, Dyanne's sliding scale) all address the first goal 100%. He acknowledged that they don't all address Dyanne's goals completely.

Regarding impact on private property owners, the current ordinance and the sliding scale proposal affect every property with woodlands to some degree, regardless of size.

Regarding simplicity, the current ordinance is complicated and there are still different opinions on what some sections mean. The sliding scale proposal is perhaps even more complicated.

Warren Jacobs said there is a misconception that they can't cut down trees for certain reasons. It's not true unless they remove large portions of woodlands to build something. It doesn't apply to any other thing including logging.

Ranier Keown explained that he reads the ordinance to mean it pertains to any activity on any piece of property with woodlands.

Dyanne Jurin said you can remove trees unless you are grading or building something.

Ranier Keown referred to page 12 where it states that “All uses and activities” are governed by this ordinance. Dyanne didn’t interpret it that way so we need to ask Peter about it. She thinks the ordinance doesn’t apply unless you are building something. Ranier Keown said if that is what we are saying, then we need to make that clear because that isn’t what the current ordinance says.

Dyanne Jurin asked for feedback on the sliding scale proposal. She reiterated that typically homes put on wooded lots are nestled within the woods and people don’t clear more than they need. She said she isn’t sure about that. People like their 4000 square foot home with a double garage. You should buy a bigger piece of property if you want that. She explained that a 4 acre lot would be fine for that type of home.

Warren Jacobs said that as land values increase, people will buy land that isn’t what they want and will make it what they want. We should take that into consideration. We need these safeguards.

Dyanne Jurin said people moving into Lower Frederick should plan well. We need to let them know that we value our woodlands. We need regulations that make people stop and think about it. And they can always go to zoning hearing board for relief. She doesn’t agree that anyone with less than 10 acres shouldn’t be responsible for the saving of the clean water, decrease flooding, etc.

Ranier Keown explained that the vast majority of woodlands in Lower Frederick are owned by private property owners who have chosen to live on the property and protect the trees all around them.

Dyanne Jurin explained that farmland will probably go to large developments in the future, and the woodlands will go to smaller developments, and we need to regulate that also. Warren Jacobs estimates that as land value goes up, developers will be more interested in woodland properties than they’ve been in the past.

Dyanne Jurin reviewed the sliding scale numbers from Peter and her recommended modifications that make it more restrictive. She questioned the group whether this was the right compromise.

Ranier Keown feels that his proposal achieves the three primary goals better than the other proposals or the current ordinance.

Warren Jacobs states that he is torn because the Ranier’s logic that neighborhood lotting requires 10 acres and that is where we have the biggest problem is true. Ranier’s proposal is enough for the scenarios we’ve already been dealing with over the years, but it may not be adequate for unforeseen future scenarios. We need to take that into consideration.

Dyanne Jurin asked the group to take some time to think about the goals, future scenarios, and the existing proposals for the next meeting and we will move onto other topics tonight. She also asked the public for feedback on the proposals.

Kenneth Quay expressed concern that the sliding scale proposal may not allow enough space for a house, stormwater, sewer, etc. You need to make this sensible. This is impossible for smaller lots. The solution is to make the lot size requirements larger. He thinks that lots larger than 1 acre would not be a problem.

Bill McGovern (Memorial Drive) expressed concern that the other requirements of the NRPO get added to the woodlands requirements. These are cumulative requirements which makes it more difficult. He also explained that even this group which has spent a long time reading and understanding the ordinance, still has different opinions on what it means. Imagine when this goes to zoning hearing

board. They don't have the experience. It's too complicated. There is so much open to interpretation. He prefers what Ranier Keown did so it is plain as day.

Ernie Schmitt agreed with what Bill McGovern said and agrees with Ranier's proposal. It brings common sense into the tree issue. When he was zoning officer most developers and property owners would choose to place the home in such a way that they didn't need to go to the zoning hearing board and a way that would save most of the trees.

Chuck Yeiser (Supervisor) feels that Peter's proposed sliding scale percentages are reasonable and not overly restrictive. You can go up to 5 acres with almost no penalties. He also confirmed that these requirements apply to everyone, and Peter made that clear in the past.

Dan Orfe concurs with Chuck Yeiser's comment that Peter's proposal is a fairly sound thing to put in place but he would like to see the other proposals first.

Ranier Keown questioned whether Peter's proposed requirements are forever and in perpetuity regardless of future subdivision of larger lots. Once the allowable percentage of woodlands are removed, no more can ever be removed even if the property is subdivided into separate lots at a later time. Dyanne Jurin said yes, that is the case.

## **5. Replacement tree diameter, quantity and density, and alternatives**

Dyanne Jurin suggested the following changes to section 2a:

- "acre for acre" should be removed and replaced by the quantity of trees that must be replaced.
- 3½" should be replaced with 2"

Ranier Keown questioned whether that means the replacement trees can be replaced on an area that is smaller than that which was cleared? This would allow a developer to clear a large area of woodlands and stack all those replacement trees in a smaller area in the corner of the development. After further discussion, the group agreed to leave the "acre for acre" requirement as it is.

Warren Jacobs is ok with reducing to 2". Ranier Keown agreed with the 2" change.

Ranier Keown expressed concern about the replacement tree option in general. It's an easy way out for developers and they will take that option in most cases rather than trying to save the existing woodlands.

## **6. General Discussion**

Kenneth Quay explained that several trees and branches have landed on his home over the past few years. The safety of having trees around a house needs to be taken into consideration.

Warren Jacobs suggested that we need clarification from Peter on a few questions raised during the meeting.

Mark Hudson will resend the resolution defining the tasks that the Supervisors asked of the committee.

### Appendix A:

Peter Nelson's answers to questions from the March meeting.

Forwarded by Mark Hudson via email on April 1, 2022.

I received the following questions at the Ad Hoc Ordinance Review Committee Meeting last Thursday:

1. Warren is concerned that off site tree plantings are illegal, please see the attached document referring to a court case in Solebury Township. **Only applies to required off-site planting. We only give them the option of off-site planting; we do not require it.**
2. Ranier, put a proposal before the board recommending that the Woodlands portion of the zoning ordinance start when a property is over 10 acres, is this legal? **Yes, although increasing the size of woodlands necessary to meet the definition of woodlands would probably be better in some ways.**
3. Do we need to show the Fee-in-lieu of Fee for a tree that is not planted somewhere? **Show where – to whom?**
4. If we want to allow people to plant plants other than the 3.5" tree do we need to have a chart showing that or can we add language that would allow the engineer to work with the applicant to come up with an agreed to substitution plan? **We can change the replacement tree size. Right now they have to plant 3.5" trees or get a variance to this size requirement.**

### Appendix B:

Input to the Woodlands Definition Discussion.

Provided by Warren Jacobs via email on April 12, 2022.

Here are some of my thoughts on the "Woodlands" definition issue:

\* We don't need multiple classifications like some municipalities' ordinances contain because we have two categories now- "Environmentally sensitive areas" and "Other woodlands" BUT we do need to further define "Environmentally sensitive" by at least including undisturbed diabase soils. A reference map of sensitive areas would be good. It could be based on the existing diabase map. It would be an appendix, as is done in other townships.

\*Wording should include "woodland plant community" or similar, as we have discussed.

\*Additional suggested wording (plagiarized from Kennet Twp): "Woodland shall include any area where timber has been harvested within the previous three years and/or woodland disturbance has occurred within the previous three years which would have met the definition of woodland prior to timbering or disturbance. Woodlands do not include orchards or old fields.

\* I would be OK with increasing the size from 6" DBH (not caliper) to 8" or more in the definition as well as in the plan requirements for SALDO if this might make the regs more practical and thus more likely to be enforced.

**Appendix C:**

Proposals for definition, sliding scale, replacement tree calculation, and number of trees.  
 Provided by Dyanne Jurin via email on April 12, 2022.

Attached are proposals for definition, sliding scale, replacement tree calculation and number of trees.

Highlighted in red are new proposals or wording, in black the original the solicitor had sent.

**Woodland definition:**

Woodland: Land containing areas, groves and stands of trees, and the plant community, where the largest trees measure at least six (6) inches in diameter at breast height, and form a complete or nearly complete aerial canopy covering one-quarter acre or more as measured from the drip line of the outer trees; woodlands are also a grove or stand of trees consisting of ten (10) or more trees measuring twelve (12) inches diameter at breast height, forming a continuous canopy. Woodlands shall include any area where timber has been harvested within the previous five years and/or woodland disturbance has occurred within the previous five years, which would have met the definition of woodland prior to timbering or disturbance.

I. Woodlands. In areas of woodlands, the following standards shall apply:

(1) Woodlands in Environmentally Sensitive Areas. No more than twenty (20) percent of woodlands located in environmentally sensitive areas shall be altered, regraded, cleared, or built upon. Environmentally sensitive areas shall include floodplains, floodplain soils, hydric soils, riparian buffers, steep slopes, wetlands, and wetland margins.

(2) Other Woodland Areas. Woodlands which are not located in environmentally sensitive areas (as defined in Subsection (1) above) shall be protected in accordance with the following chart and shall not be altered, regraded, cleared, or built upon, unless the following requirements are met:

Lot Size (in acres)	Maximum Amount of Woodlands Allowed to be Disturbed without Replacement Trees				Maximum Additional Woodlands Allowed to be Disturbed with Replacement Trees			Total Allowed Disturbance of Woodlands
1/2	10,890sq ft	50%	95%	20,691	0%			50%
1	21,780 - 34,848	50%	95%	41,382	No replacement trees required			50%-34,848sf 95%
2	34,848	40%	95%	82,764				40%
2 to <3	39,204	30%	90%	117,612	26,136	20%	0%	50% 90%
3 to <4	52,272 148,104	30%	85%		34,848	20%	0%	50% 85%
4 to <5	65,340 174,240	30%	80%		43,560	20%	0%	50% 80%
5 to <6	65,340 182,952	25%	70%		65,340	25%	5%	50% 75%
6 to <7	76,230	25%	60%		76,230	25%	10%	50% 70%
7 to <8	87,120	25%	50%		87,120	25%	15%	50% 65%
8 to <9	98,010	25%	40%		98,010	25%	20%	50% 60%
9 - 10	108,900	25%	30%		108,900	25%	25%	50% 55%
>10		20%	20%			30%		50%

(a) When woodlands are being disturbed which disturbance requires replacement, all such disturbed woodlands shall be replaced by **measuring the portion of acre(s) disturbed, and on an acre-for-acre basis through the planting of replacement trees (reforestation).** ~~the actual number of replacement trees shall be calculated by~~ multiplying the acreage of disturbance requiring

**Appendix C - continued:**

Proposals for definition, sliding scale, replacement tree calculation, and number of trees.

Provided by Dyanne Jurin via email on April 12, 2022.

replacement by ~~two hundred~~ **one hundred (100)** ~~(200)~~ trees per acre. All replacement trees shall have a minimum tree caliper of **two inches**. ~~three and one half (3½) inches at DBH.~~

(b) The planting of replacement trees shall be done in accordance with a woodlands management plan prepared by a licensed forester and shall comply with the provisions of Sections 145-43.1.B – E of the Township Code, except where the tree replacement only involves a single residential or nonresidential lot and no subdivision or land development; in such instances, the reforestation may take place anywhere on the lot in accordance with a submitted planting plan.

(c) The planting of replacement trees shall occur onsite. If all the replacement ~~3~~ trees cannot be planted onsite, the landowner/ developer can plant them elsewhere within the Township with the approval of the Board of Supervisors or can pay a fee in lieu of the required replacement to the Township's Forest Conservation Fund, as opted by the landowner/developer.

(3) The extent of any area of woodland disturbance shall be measured to include the entire area within the drip line of any tree, where any part of the area within the drip line of said tree is subject to woodland disturbance.

(4) Except where a timber harvesting operation has been approved by the Township, clearcutting of any woodland area shall be prohibited except to the minimum extent necessary to permit the implementation of an approved land development or building permit in conformance with this Section.

(5) The landowner/developer shall demarcate and protect the remaining trees on a site or lot being developed, constructed upon, or graded by the placement of four (4) foot high safety fencing ten along the tree protection zone for these remaining trees. No construction activities, grading or other soil disturbance, dumping or storage of materials/soil/rock, driving or parking of vehicles, nor any other activity that could harm this natural resource shall occur within this tree protection zone. Said fencing shall be erected prior to any work on the site or lot commencing and shall be maintained until the work is fully completed and all equipment and materials have been removed. The safety fence shall be erected pursuant the manufacturer's recommendations, so long as a fence post is placed at every corner/change of direction and no fence post is more the ten (10) away from another post. **The protective fence shall be removed by the landowner/developer when the work is fully completed.**



**Appendix D:**

Comparison of alternatives and their level of achievement of the ordinance goals.

Provided by Ranier Keown for discussion in the meeting.

**Achieving the Stated Goals**

Goals of the Woodlands Zoning Ordinance		Level of Achievement		
		Current Ordinance	Proposal from the 3/10/22 Meeting	Sliding Scale Proposal
1	To prevent what happened at the Arcadia subdivision. Specifically to restrict the random and widespread deforestation done by developers before and during neighborhood lotted development.	100%	100%	100%
2	To minimize the impact on private property owners who are not engaged in subdivision and land development.	0% Every wooded property is affected	80% Only affects properties larger than 10 acres	0% Every wooded property is affected
3	To be simple, concise, understandable, and enforceable.	30% Multiple woodlands types and replacment scenarios	80% The only criteria is ± 10 acres	15% More complex than the current ordinance

**Notes:**

The original intention of the woodlands ordinance was to restrict developers during SALDO. It was not intended to impact private property owners.

The woodlands ordinance wouldn't be in zoning at all if we were confident that the SALDO requirements could be enforced.

The 3/10/22 proposal fully satisfies goal #1, and mostly satisfies goals 2 & 3.

The sliding scale proposal extends the restrictions to every wooded property, and is much more complex to understand and enforce.

The current ordinance and the sliding scale proposal both allow developers to sidestep most of the requirements by paying a fee.