

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – JANUARY 26, 2021

A special meeting of the Zoning Hearing Board of the Township of Lower Makefield was held remotely on January 26, 2021. Mr. Zamparelli called the meeting to order at 7:33 p.m.

Those present:

Zoning Hearing Board: Anthony Zamparelli, Chair
 Matthew Connors, Secretary
 Peter Solor, Member

Others: James Majewski, Director Planning & Zoning
 Barbara Kirk, Township Solicitor
 Adam Flager, Zoning Hearing Board Solicitor
 Frederic K. Weiss, Supervisor Liaison

Absent: Pamela VanBlunk, ZHB Vice Chair
 Michael Tritt, ZHB Member

APPEAL #20-1881 – CHALLENGE THE VALIDITY OF THE MIXED-USE OVERLAY
ORDINANCE BY: DARWIN DOBSON, LAWRENCE BORDA, & BRYAN MCNAMARA
(Continued)

Mr. Zamparelli stated the issue is Standing, and he understands there will be someone Testifying this evening and that there is also someone who is requesting Party Status. Mr. Flager stated Nathan Fox, attorney with Obermayer, is representing Shady Brook Farm, and they are requesting Party Status. Mr. Flager stated Shady Brook Farm is in proximity of the area under discussion, and they can request Party Status as a neighboring property owner.

Ms. Kirk stated she understands that Dr. Swanson had finished his Testimony and there had been cross examination of Dr. Swanson. She stated she believes just Mr. Borda was left to Testify.

Mr. Eric Goldberg stated Mr. Meth and Dr. Swanson had completed their Testimony, and Mr. Larry Borda will Testify this evening.

Mr. Larry Borda was sworn in.

Mr. Goldberg referred to Exhibit A-11 which is a copy of the Lower Makefield Township Zoning Map.

Mr. Borda was asked and stated he lives at 508 Heritage Oak Drive, and Mr. Goldberg noted on Exhibit A-11 the location of Mr. Borda's development. Mr. Borda stated his development is bounded by the Railroad tracks, Heacock Road on one side which is one means of ingress/egress, and Stony Hill Road on the other side which is the other "sole" means of ingress/egress.

Mr. Goldberg asked Mr. Borda how far he lives from the subject property, and Mr. Borda stated "as the crow flies based on Google" about 5,000 feet. Mr. Goldberg stated that is slightly under one mile, and Mr. Borda agreed.

Mr. Goldberg stated the Prickett Preserve property is where the proposed development in the Overlay District will take place, and Mr. Borda stated that was his understanding. Mr. Goldberg asked Mr. Borda if he is familiar with the proposed Overlay District and the accompanying development, and Mr. Borda stated he "generally is." Mr. Goldberg asked Mr. Borda if he attended the Hearings in August regarding the potential enactment of the Overlay District when the developers presented their Witnesses. Mr. Borda stated he believes he has attended every meeting of the Boards and Commissions which have considered this since the inception including the Zoning Hearing Board. He added he believes the only meeting he missed was the Planning Commission meeting which took place last night.

Mr. Goldberg showed a slide of the O/R District with the subject property shown. Mr. Borda stated he agrees that is the subject property. He stated it is on the other side of Township Line Road from where it is designated O/R and bounded by Stony Hill Road to the south and Yardley-Newtown Road By-Pass to the north. Mr. Goldberg showed an area immediately above the subject property which is a Corporate Center that has a Dunkin' Donuts, and Mr. Borda agreed. Mr. Goldberg noted the location of Shady Brook Farm, and Mr. Borda agreed.

Mr. Goldberg stated there are six properties within 400' of the subject property, and Mr. Borda stated he believes that is correct. Mr. Goldberg stated they are Shady Brook Farm, the location of which he showed on the slide which is Tax Parcel #20-12-1. He also noted the Corporate Center with the Dunkin' Donuts and the hotel which is Tax Parcel #20-16-041. He noted a parcel to the extreme edge of the O/R District owned by

Frankford Hospital which is Tax Parcel #20-12-1-1. He noted an area shown in blue which is open space owned by either Lower Makefield Township and/or PennDOT which is undeveloped land.

Mr. Harris asked whether Mr. Goldberg or Mr. Borda is Testifying.

Mr. Goldberg stated Mr. Borda is Testifying, and he is trying to expedite and move things along. Mr. Harris stated he feels they should get more direct Testimony from Mr. Borda and less of Mr. Goldberg's description. Mr. Borda stated Mr. Goldberg's description of the surrounding properties is accurate.

Mr. Goldberg stated going down a little bit further in the O/R District, there is Tax Parcel #20-12-2-1 which is an office building; and Mr. Borda agreed that it is an office complex. Mr. Goldberg noted Floral Vale at a location he showed on the slide which is Tax Parcel #20-12-6-3, and Mr. Borda stated that is exclusively Office/Condominiums and "maybe a restaurant."

Mr. Goldberg stated in this situation, those six properties are the ones located within 400' of the subject property; and Mr. Borda stated that is his understanding.

Mr. Goldberg stated Shady Brook Farm has a residence on it in addition to being an active farm. Mr. Borda stated he believes that there is at least one residence. Mr. Goldberg asked the closest residence, ignoring that, to the subject property. Mr. Borda stated he believes the closest Residential properties other than the one residence on Shady Brook is the new development called Flowers Field. Mr. Goldberg noted Flowers Field on the slide, and Mr. Borda agreed with that location.

Mr. Goldberg asked Mr. Borda if he has any objections to what has been proposed on the Prickett Preserve property or any concerns, and Mr. Borda stated he does. Mr. Goldberg again noted the location of Mr. Borda's residence, and he asked Mr. Borda to explain what his objections are and why.

Mr. Borda stated his development is "sandwiched" between Stony Hill Road, the Railroad tracks, and Heacock, which turns into Oxford Valley Road as you get closer to Route 1. He stated that means that in order for him to get to other areas of Lower Makefield Township north of his home and/or to get to Newtown, he has to go by way of Stony Hill and/or Heacock and Oxford Valley. He stated there have already been assessments made by the developer's traffic engineer that 10% of the traffic that will be generated by this project is going to be going toward Stony Hill for which there are no improvements

proposed other than for some minor traffic light changes where Stony Hill intersects Township Line. Mr. Borda stated there is definitely going to be increased traffic on one side of his development which is going “to make life more difficult” for him. He stated in addition there is Heacock which is another one of the few thoroughfares that runs from south of Route 1 and through Lower Makefield. Mr. Borda stated that anyone who is coming from south of Route 1 it is quite likely that one or both of these roads is going to be used as one of the main thoroughfares to get to Wegmans or to get around Wegmans because of the traffic that is generated by Wegmans. He stated that is going to increase traffic and make it difficult for him to exit and enter his development, which in turn he believes is going to have an impact not only on quality of life, but also on his property values.

Mr. Borda stated he also believes that this project will have a negative impact as a function of the impact on property values which have been testified to by his expert as it pertains to what impact there is going to be by virtue of this project and its inability to rent the majority of the apartments that are being proposed. He stated he is also concerned about the potential for Giant and/or McCaffrey’s to be put out of business by the Wegmans; and if that happens, he feels that similar to what happened with ShopRite which was vacant for many years, that if one of those two stores goes vacant, we will have a similar situation, and that in turn will have an impact on the other tenants in those market areas which will in turn have a negative impact on his property value and his quality of life.

Mr. Goldberg noted the intersection of Stony Hill Road and Heacock Road on the slide, and Mr. Borda stated that is correct.

Mr. Borda stated there are obviously impacts monetarily from the standpoint of property tax impacts, and he believes that there are also statutory violations that are being done by the developer; but that does not necessarily relate to Standing for him individually, and that is more for every resident of Lower Makefield who he believes will be negatively impacted by this project.

Mr. Harris stated he understands that Mr. Borda is concerned that the impact on the quality of life, the increased traffic, the potential for the Giant and McCaffrey’s to go out of business, and the impact on the other tenants of those shopping centers will negatively impact all of the residents of Lower Makefield Township. Mr. Borda stated he believes it will impact all of the residents of Lower Makefield, and he believes it will especially impact the

residents of his development because they are adjacent to the C-1 triangle that is north of his development where Giant and McCaffrey's exist. He stated they are also hemmed in by Heacock Road and by Stony Hill Road.

Mr. Harris asked if his neighbors to the right of his home will be equally impacted as he will. Mr. Borda stated he believes that every person in his development subject to the varying property values within that development, will all be impacted severely by this project. Mr. Harris stated Mr. Borda's economic expert had stated that anyone that was one mile away from this project would be adversely effected, and he asked Mr. Borda if he agrees with that statement. Mr. Borda stated he believed what he said was that many people would be impacted to varying degrees especially those in approximation of one mile of the project. Mr. Borda stated he does not have an expertise to opine on what he Testified to.

Mr. Harris stated Mr. Borda filed the action before the Zoning Hearing Board with Mr. Goldberg representing him in this matter, and he also filed an action in the Court of Common Pleas that is being represented by Mr. Paul Norris, one of Mr. Goldberg's partners.

Mr. Harris stated Mr. Borda's expert Testified that he thought that Mr. Borda would have a 1.8% diminution in property values as would all of Mr. Borda's neighbors. Mr. Borda stated he thought it was 1.4%, and he does not know what Mr. Harris means by all of his neighbors. Mr. Harris stated the expert stated that everyone in his development would have a 1.4% diminution in property values. Mr. Borda stated he did not recall that specific Testimony.

Mr. Zamparelli stated he believes that is correct as he remembers talking about it and reading it. He stated he believes the expert eventually stated it was probably closer to 1.4%.

Mr. Harris stated the point was that this was an effect that was going to be felt by everybody in Mr. Borda's neighborhood, and Mr. Borda stated his answer would be the same as his last answer. Mr. Harris asked Mr. Borda what is special about his house that would make it different from anyone else in his development. Mr. Borda stated other than the difference in value from house to house he feels that everyone in his development will be impacted similarly on a percentage basis by virtue of this project going forward.

Mr. Harris stated Mr. Borda is an attorney, who is extremely well-regarded, and he is experienced. He asked Mr. Borda on what basis he has brought these two Challenges and spent tens of thousands of dollars on attorney fees when his property value could be effected by 1.4% to 1.8%, and he asked how that “makes any sense.”

Mr. Borda stated Mr. Harris is looking at one expert’s Testimony on one facet of the impact. Mr. Borda stated he feels very strongly that this is bad for the entirety of his Township and his fellow citizens, and that is in large part what drives him to want to do this. He stated he believes that this project will have a negative impact overall on the Township and Tax Revenues. He stated he believes that it will have a negative impact on long-standing and good business neighbors, and he believes that it will cost us more to provide Fire and Police for this project, which by the developer’s own numbers will only generate \$200,000 a year; and that will cost the Township monies to cover that gap. He stated that is the main driver for why he is doing what he is doing.

Mr. Borda stated he is also especially concerned about what the expert Testified to in terms of diminution in value on his property which is not just necessarily a function of the negatives that surround the project per se but that are also a function of what happens when McCafferty’s and/or Giant shut their doors, and the “mall” is vacant, combined with the fact that his development has to deal with additional traffic generated by this project on both sides of the only streets on which he can get in and out of the project.

Mr. Borda stated the analysis by the expert is “not the be all/end all” in terms of what the impact is on his development. He stated he feels that common sense can dictate that anyone who knows this area that is already heavily-traveled and who has seen what happened at the ShopRite being vacant for years and the loss of other tenants in that strip center combined with the heavy traffic that already exists in this area and which will be worsened with no improvements offered by the developer to address those can all be taken into consideration as having a direct impact on his development.

Mr. Harris stated what Mr. Borda has Testified to are the impacts that will be experienced in general by all of the residents of Lower Makefield in his opinion. Mr. Borda stated Mr. Harris has mis phrased his Testimony. He stated he went on at length and explained that it is not only the impact on every resident of the Township, but also specific to those people who live in his development who are uniquely situated to be severely impacted not

only by the traffic that this project will “develop” without any improvements to the traffic lights, the intersections, or the lanes combined with the C-1 area immediately adjacent to his development which he believes will be severely impacted negatively by this project.

Mr. Harris stated Mr. Borda has a two-pronged Objection, one is the Objection that will be shared by all of the residents of Lower Makefield and a second Objection that will be shared by all of the residents of Mr. Borda’s Subdivision, and Mr. Borda agreed.

Mr. Harris stated Mr. Borda mentioned McCaffrey’s and Giant, and he asked if he has talked to the owners of the Giant about this project; and Mr. Borda stated he has not. Mr. Harris asked Mr. Borda if he has talked to the owners of the McCaffrey’s about this project, and Mr. Borda stated he has not. Mr. Harris asked if the owners of the Giant or the McCaffrey’s are contributing to his legal fees, and Mr. Borda stated he is responsible for the legal fees.

Mr. Goldberg Objected adding there is no relevance to this.

Mr. Harris stated he asked if they are contributing, and Mr. Goldberg Objected.

Mr. Harris stated the question is who is aggrieved. He stated if someone else is paying and contributing to legal fees, this person is not aggrieved, and it is a fair question. Mr. Goldberg stated it is not a fair question. Mr. Harris stated the question goes to bias and to whether or not in fact it is Mr. Borda who is aggrieved or someone else who thinks they are aggrieved.

Mr. Goldberg Objected.

Mr. Flager stated Mr. Borda has already answered that he was responsible for the legal fees.

Mr. Harris stated the question was whether someone was contributing.

Mr. Flager asked Mr. Goldberg why he feels this question is inappropriate. Mr. Goldberg stated it is absolutely irrelevant to this, and there is not basis for it. He added that Mr. Borda is the only person before them, and how Mr. Borda gets his money or pays his bills is irrelevant to anything. He stated

the issue before the Board at this moment pertains to Mr. Borda's Standing, and if he is an aggrieved Party by virtue of the Testimony that has been presented. He stated who pays for this has no relevance whatsoever.

Mr. Harris stated it does have relevance because the question is whether it is Mr. Borda who is really aggrieved or somebody else who is paying the bill that thinks that they are aggrieved.

Mr. Flager stated he would disagree with Mr. Harris at this stage specifically because Mr. Borda is not saying he is aggrieved because of his legal fees; and if that was a basis for why he was saying he was aggrieved, it might be relevant. Mr. Harris stated he is not suggesting that he is aggrieved because he has legal fees, rather the question is whether or not it is really Mr. Borda who is aggrieved or somebody else who is contributing to his legal fees; and that is relevant to determining whether it is Mr. Borda who is aggrieved or somebody else.

Mr. Zamparelli stated he understands what everyone is saying, and he has read the Reports and the Minutes from the Board of Supervisors' meetings which alluded to some of what Mr. Harris is saying; however, he feels that they are getting off track, as they are trying to stay with Standing. Mr. Zamparelli stated he does not know how Giant and McCaffrey become part of this.

Mr. Harris withdrew his question, and he stated he has no further questions of Mr. Borda.

Ms. Kirk stated Mr. Borda had indicated that he and his development were uniquely situated to be harmed based on the limitation of access out of the development, and Mr. Borda stated that was part of what he testified to.

Ms. Kirk stated he also stated that the closest Residential development near the project was Flowers Field, and Mr. Borda agreed. Ms. Kirk stated that development has two main accesses as well, and Mr. Borda stated he does not know. Ms. Kirk asked if it is fair to say that to get into the Flowers Field development due to its location, most people would either have to come from Stony Hill Road into it or from Yardley-Langhorne Road; and Mr. Borda stated while that is correct, Yardley-Langhorne is not one of the major thoroughfares from the south of Route 1 into and through Lower Makefield. He stated it seemed to him as though it would be logical to determine

that a lot of the traffic that is going to be heading toward the project and toward Newtown will be coming through Stony Hill and/or Oxford Valley/Heacock.

Ms. Kirk stated it is Mr. Borda's Testimony that notwithstanding the fact that the Residential development of Flowers Field is closer to the subject property, they will not suffer the same unique type of harm as Mr. Borda and those in his development; however, Mr. Borda stated he has not looked at that in detail and could not answer.

Ms. Kirk asked Mr. Borda if he opposes the project in its entirety, and Mr. Borda agreed. Ms. Kirk asked Mr. Borda if he feels that the proposed project would not benefit the residents of the entire Township, and Mr. Borda agreed.

Ms. Kirk stated Mr. Borda participated in the Hearings before the Board of Supervisors when they decided whether or not to enact the Mixed-Use Overlay District, and Mr. Borda stated he believes he attended every meeting before the Board of Supervisors. Ms. Kirk stated Mr. Borda had full opportunity to present his objections to the Supervisors at the time of the Hearings just like every other resident in the Township, and Mr. Borda agreed "based on what he knew at the time." Ms. Kirk stated it was the function of the Supervisors in their legislative capacity to ascertain whether or not this Ordinance should have been approved, and Mr. Borda stated he would have to make an assumption to answer that question.

Mr. Solor asked if they are not to focus on the Standing issue. Mr. Zamparelli stated he was going to let them go a little further.

Ms. Kirk stated Mr. Borda voiced objections at the Board of Supervisors' meetings concerning traffic congestion and the concern about the diminishing property values; and those were the same sort of objections that were raised by other residents in the Township during the Supervisors' meetings. Mr. Borda stated he did not know what Ms. Kirk meant. Mr. Borda stated he agrees that there were objections that were similar to the objections that he raised.

Mr. Zamparelli stated he read the Minutes. He stated Mr. Borda had indicated that there were no traffic improvements to be done, but in the Minutes it is clearly stated that there will be traffic improvements done. Mr. Borda stated in terms of the area that he is talking about that directly impacts his development, there is nothing that is being done on Stony Hill or Oxford Valley/Heacock for

the entirety of that run where it intersects with Route 1 or Big Oak where it intersects with Oxford Valley coming over across Route 1. He stated there are no improvements on any of those, and the “lion’s share” of the improvements are occurring where the By-Pass intersects Stony Hill Road, and there is a traffic signal change in terms of adding a right-turn arrow at the intersection of Stony Hill and Township Line Road; and he believes that is the only improvement on Stony Hill Road. He stated in terms of the roads that he is talking about in dealing with the traffic that is coming from the south of the Township which has limited access points to deal with Levittown, and all of the other Townships and areas south of Route 1 that are going to have traffic generated migrating over to Lower Makefield to reach this project and/or to avoid this project because of traffic congestion, there is nothing by way of traffic improvements.

Mr. Zamparelli stated there are numerous traffic improvements at the site, and Mr. Borda may never even see the traffic; and Mr. Borda is speculating that he will. Mr. Zamparelli stated he agrees that they are not going to widen the street in front of Mr. Borda’s house; however, they did discuss the traffic improvements that they will do. Mr. Borda stated they have added a turning lane into the project itself, and “there might be a light there.” He stated the improvements that they have made are immediately in or adjacent to the project which are designed to facilitate primarily traffic coming from the Interstate and to a much lesser degree, “probably some percentage of 1% of the dollars” are going for this one signal where Stony Hill intersects Township Line Road. Mr. Borda stated the developer did not go through and do an analysis as called for by PennDOT which has a required radius, and asked for them to do projections on the impact. He stated what the developer said was that they would do whatever PennDOT asked them to do as far as the Permitted process was concerned. Mr. Borda stated in terms of what the developer has presented to the Zoning Hearing Board does not fulfill what he understands is the criteria established by PennDOT to look at a radius surrounding the project and what the impact is going to be on other intersections. Mr. Borda stated they have already seen that the intersection at Oxford Valley Road and Route 1 is maxed out. He stated it has been widened, and it is “still a mess” especially around the holidays. Mr. Borda stated they have already discussed at the last Hearing that there is increased congestion on Heacock and Stony Hill and the areas surrounding where the Giant and McCaffrey’s area. Mr. Borda stated the Township is “step-by-step-by-step” getting more and more congested. He stated “as far as he is concerned this is going to be a tipping point for his development because it is sandwiched in between two of the major and very few thoroughfares” that allow people to get from the south of Route 1 and over to the area of this project and/or Newtown.

Mr. Flager asked Mr. Borda if he is suggesting that there should be additional traffic improvements closer to his neighborhood. Mr. Borda stated what he is suggesting and what he feels was testified to by Mr. Meth, his traffic engineer expert, was that PennDOT criteria as published by them, indicates what should be looked at as far as the Permitting process is concerned. Mr. Borda stated his understanding was that circumference would incorporate his development and “even outward toward” where Route 1 intersects with Oxford Valley Road. Mr. Borda stated “we are somewhat blinded” because we are limited by what the developer chose to look at because his expert thought that was pertinent, and because “he hopes” that PennDOT will not require as part of the Permitting process that this extended area be looked at. Mr. Borda stated he is not sure if the Zoning Hearing Board has the authority to tell a developer that they should be doing what PennDOT suggests they should do in their publications.

Mr. Borda stated he is very concerned for the people in his development and for himself in terms of the impact on his development and in terms of the Township and those people who use Oxford Valley Road where it “transgresses” Route 1 to get in and out of the Township. He stated he feels this will make things worse, and nobody has looked at what that impact is going to be, and nobody is offering anything by way of property or traffic improvements; and in fact, they are going to be very limited to do that because that intersection and the bridge of Oxford Valley Road over Route 1 is maxed out. He stated it is not going to get any better; and when you make the left on Big Oak Road, heading over toward this project, it is known that it narrows to a one-lane bridge crossing I-95 which is another issue.

Mr. Zamparelli stated the area Mr. Borda is talking about is at least three miles away. He stated at this point they are looking at Standing. He stated he read the Minutes, and he feels that what Mr. Borda is advised of is not accurate according to what the Minutes indicated which was that the developer would do whatever is necessary to make it work. Mr. Zamparelli stated they are not looking at whether Giant or McCaffrey’s will go out of business, and they are looking at Standing. Mr. Zamparelli stated he believes that Mr. Borda will be impacted just as much as anyone else will who lives around there including himself as he lives around there as well.

Mr. Solor asked if any analysis was done regarding what would happen if this property were developed as an Office Park with regard to traffic and economic impact.

Mr. Connors stated he feels that is a planning jurisdiction which the Zoning Hearing Board does not have.

Mr. Zamparelli stated at this point they are considering the Standing to invalidate the Board of Supervisors Amendment of the Overlay Ordinance.

Mr. Borda stated he has no more Testimony to give.

Mr. Nate Fox, attorney on behalf of Shady Brook at Flemings Inc., stated this is the property owner for the Shady Brook Farm parcel which is immediately across the street from the property before the Board this evening. He stated they are requesting Party Status as they have an interest in the Overlay District. Mr. Fox stated his client hopes to obtain similar relief and believes that this type of Overlay is the future of the O/R District for this area of the Township to be economically viable. He stated they do not anticipate presenting any Testimony and do not need to further examine any of the Witnesses, and they feel that the Township has done a fine job of that. He stated they are just asking to preserve their status as a Party as an adjoining property owner.

Mr. Flager stated he would recommend that Party Status be granted as a neighboring property owner, and there was no Objection from the Board.

Mr. Flager stated before they take Public Comment, it should be limited to the issue that is before the Board currently which is just on the issue of Standing. Mr. Flager stated if the Board were to vote that the Applicants do have Standing, they would then proceed to a full Hearing on the merits and any comments about the actual merits of the Application would be addressed. He stated since the Board at this time has limited the Testimony to Standing, the Public Comment should be limited to that issue as well.

Ms. Lisa Tenney, 156 Pinnacle Circle, was sworn in. She stated she has followed every meeting and has called in and listened. She stated her back yard faces Stony Hill Road so she gets the impact of traffic but “that is not the point of this.” She stated she supports fully “Esquire Borda’s” concerns as an LMT citizen and his Standing for his property as being looked at as being impacted by this development especially due to the proximity. Ms. Tenney stated she is a PhD-trained scientist and they use mathematical trends. She stated Mr. Borda has an expert economist from Philadelphia who has give the Board “a fact” that his property, due to the proximity, will be negatively impacted. Ms. Tenney asked if the Board does not believe in

facts. She stated this is “how science and how we develop hypotheses of what is going to happen in the future, and base experiments on.” She stated that is a fact. She stated each property, depending on their initial property value, and their proximity to the development will be differentially negatively effected. Ms. Tenney stated she supports Mr. Borda’s concerns. She stated she believes in mathematical models that support trends. She stated he has also had an expert traffic person. She stated we are all aware that the traffic improvements are “just on the 95 getting into the Wegmans.” She stated she believes that everybody will be differentially effected. She stated some may be positive – but mostly negative. She stated his property in the proximity in his particular development, it was proven will be negatively impacted. Ms. Tenney stated there is no speculation and “mathematical models are mathematical models.”

Mr. Louis Papastrat, 526 Heritage Oak Drive, was sworn in. He stated he lives in the Heritage Oak neighborhood that Mr. Borda is in. He stated he agrees with Mr. Borda who has presented a lot of “good issues” about the impact as far as traffic. Mr. Papastrat stated it was also stated previously about the train crossings; and at times when there is a large freight train going through it backs up a lot of traffic, and that is another impact that is going to provide a problem for those in Heritage Oaks. He stated making left-hand turns out of his development is a big problem at this point in time as well as it will be in the future. Mr. Papastrat stated when you have the proposed project with the farm across the street and all that goes on over there, there will be two large businesses facing each other. He stated as Mr. Borda had indicated that road is going to be very difficult for travel. He stated the impact is being “missed here as to what is going on with it.” He stated he agrees that other businesses could be impacted by Wegmans coming in, and being another supermarket that we do not need in the Township. He stated it will be competitive. Mr. Papastrat stated he is voicing his support as a resident of the Township and in the Heritage Oak development.

Mr. Edward Albertson, 1554 Edgewood Road, was sworn in. He stated one end of Edgewood is 25 miles per hour, and his is 40 miles per hour. He stated “building up the traffic to get from the lower end of Lower Makefield to the upper end he does not believe there was a Traffic Study done for Edgewood to get to the new development.” He stated he also has not heard anything on the improvements for utilities brought in to this new development; and he asked where they are going to tap in for waste water, where is the power coming from, and who is going to pay for all of these improvements.

Mr. Connors stated they are limiting the discussion to Standing. Mr. Zamparelli stated while he understands Mr. Albertson's comments, that discussion is not for tonight, and they are just considering whether the people making this Appeal have Standing.

Mr. Albertson stated he agrees with most of the things Mr. Borda was saying which is why he called in.

There was no other members of the public wishing to comment.

Mr. Goldberg asked that Exhibits A-1 through A-11 be accepted into Evidence. Mr. Harris had no Objection. Ms. Kirk had no Objection. Mr. Flager stated they are admitted without Objection.

Mr. Goldberg stated in summary initially Mr. Borda piggy-backed on the Testimony of the other two Witnesses and described how his particular area and his particular house is impacted via traffic and pecuniary interest. Mr. Goldberg stated that there are a plethora of Cases that have been decided by the Commonwealth of Pennsylvania pertaining to Standing. He stated oftentimes those Cases talk about if somebody is right across the street or if they are "200 to 300 yards" away, they have automatic Standing. Mr. Goldberg stated much like the example tonight with Shady Brook being right across the street, there was no question about it; however, the corollary is not necessary true in the sense of just because you are not 300 or 400 feet away does not mean you do not have Standing. He stated for the reasons that were discussed earlier in terms of the traffic and in terms of financial interests, for not just Larry Borda, but also for the prior two Witnesses, he has individual Standing.

Mr. Goldberg stated it should also be noted that this is a "little bit of an unusual case," in that at the very first Hearing in December, he gave the example of "suppose the Township does something inappropriate in the middle of a cornfield and there is no one there." Mr. Goldberg stated in this particular case, there are very few properties within 100' of the subject property. He stated the closest "Residential" is about a quarter mile away. Mr. Goldberg stated there are "allegations pertaining to Contract Zoning and potential violations of the MPC." He stated if Mr. Borda is not able to challenge that, he would ask who is in the sense of "there are so few people around it," and that has to also be taken into account in addition to the Testimony that was presented as to how he is specifically impacted by what is before the Board tonight.

Mr. Zamparelli asked Mr. Flager to comment on what Mr. Goldberg has stated. Mr. Flager stated he feels they should allow Ms. Kirk and Mr. Harris make their comments, and then they could go into Executive Session.

Mr. Harris stated the Case Law on Standing is clear. He stated the first category of people who have Standing are like Shady Brook which is across the street – those who have direct proximity to the property. He stated there is then a category where you are not in direct proximity, and he noted a Case which indicated that to meet the requirements, a Party must demonstrate that the challenged action personally harms their interest in a way that is greater than of another citizen. Mr. Harris stated they have heard in these proceedings that Mr. Borda's concerns are absolutely identical to every person in his neighborhood.

Mr. Harris stated when their traffic engineer, Mr. Meth, Testified his last answer was that anyone who was one mile away like Mr. Borda was would be effected in exactly the same way as Mr. Borda. Mr. Harris stated Mr. Borda agreed that everybody in his development would be hurt exactly the same way. Mr. Harris stated the developer does not think there will be an adverse impact; however, the point is that the perceived adverse impact would have to be different from the citizenry in general, and over and over in Mr. Borda's Testimony he emphasized how all of the people in his development and all of the people in that area were going to be hurt by these alleged harms. Mr. Harris stated that does not give you Standing.

Mr. Harris noted a Case which states that other than the increase in traffic the Appellant did not offer any Testimony that the increase in traffic from present or future development in the Challenged Overlay District would have a detrimental effect on any of his property. Mr. Harris stated in that Case they decided that if you are more than a half mile away, you are not in proximity.

Mr. Harris stated the Testimony has been that the perceived harms, which the developer does not agree will occur, are just harms generally effecting everybody in exactly the same way.

Mr. Harris stated the Temple professor had Testified that there was going to be harm to property value, and his quote was from a journal which was commenting on the effect on property values from the increase of truck

traffic on a thruway in the Hague. Mr. Harris stated when he quoted that, he left out that it was truck traffic in a thruway that was effecting the adjoining properties. He stated that was not credible and should be rejected.

Mr. Harris stated this Appeal was filed by three people and not just Mr. Borda. He stated one was Mr. McNamara, and they did not “even try to establish” that Mr. McNamara had Standing. He stated Mr. Dobson lives two miles away, and Mr. Borda lives one mile away. Mr. Harris stated none of the three are in proximity, and none of them are effected in a way that is different than the community in general; and therefore they do not have Standing to bring this Action. He requested that it be dismissed.

Ms. Kirk stated the Township joins in Mr. Harris’ argument as to the Standing issue. She stated all of the Cases that she has reviewed have indicated that Standing is either if you are in close proximity to the parcel or that the harm that you allege must be distinguishable from that of the interests or harm that could be shared by all of the citizens. Ms. Kirk stated the three Appellants presented two Witnesses as experts, and the Zoning Hearing Board has the right to determine whether or not to believe the Testimony of those experts. She stated both experts did agree that there would be an effect by way of traffic on the persons down Township Line Road and not just the property occupied by Mr. Borda. She also stated the Temple professor verified that an effect on the value of the property, if any, would not just be suffered solely by Mr. Borda. She asked that the Board carefully review what was said during the course of the Hearings and Deny the Standing to proceed with the Appeal.

Ms. Kirk stated she does not feel that any of the harm that has been alleged is unique to the three Appellants; but if it would exist in the future, it would effect generally everyone in the Township.

Mr. Zamparelli asked that the Board go into an Executive Session to get legal advice.

The Board went into Executive Session at this time.

When the meeting reconvened, Mr. Zamparelli stated that the Board had some legal questions which were answered by their attorney.

Mr. Connors moved and Mr. Solor seconded that the Applicants do not have Standing.

Mr. Connors stated he has listened to the Applicants' professionals and he has a hard time identifying how the Applicants have any unique differences from anybody else not only in their subdivision, but several other subdivisions nearby that have almost identical issues. He stated he does not see how there is a uniqueness to any of the Applicants that would identify them as having Standing in this project.

Mr. Zamparelli stated this is not a typical case for the Zoning Hearing Board. He stated the Board got a lot of information, and they kept to the aspect of whether there was Standing. He stated he feels that this was hard for everyone on both sides.

Mr. Flager stated as to the Motion, it has been indicated that there is no Standing, and the second part of that is that they would be dismissing the Appeal for lack of Standing; and Mr. Connors agreed.

Mr. Connors moved, Mr. Solor seconded and it was unanimously carried that the Applicants do not have Standing, and the Appeal is dismissed.

There being no further business, Mr. Connors moved, Mr. Solor seconded and it was unanimously carried to adjourn the meeting at 9:10 p.m.

Respectfully Submitted,

Matthew Connors, Secretary