

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – NOVEMBER 18, 2008

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 18, 2008. Chairman Malinowski called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board: David Malinowski, Chairman
 Paul Bamburak, Vice Chairman
 Gregory J. Smith, Secretary
 Jerry Gruen, Member
 Anthony Zamparelli, Member

Others: Robert Habgood, Code Enforcement Officer
 John Donaghy, Township Solicitor
 James Majewski, Township Engineer
 Allen Toadvine, Zoning Hearing Board Solicitor
 Matt Maloney, Supervisor Liaison

APPEAL #08-1484 – SUSAN MACK

The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-page Plan for Lot #36 for Makefield Lakes dated 5/1/08, and this was marked as Exhibit A-2.

Edward Murphy, attorney was present with Mr. Tom Mack and Mr. Paul Wojciechowski who were sworn in. Mr. Murphy stated this Application is similar to those that have been seen before and involves the application of the Township's natural resource restriction standards to a lot that is entirely consumed by them; and as a result, without some measure of relief, could not be built upon. He stated they are requesting permission to build a single-family detached dwelling on the lot. Ms. Susan Mack is the legal owner of the lot, but she has given her husband, Mr. Tom Mack permission to testify for this Application. Mr. Mack is a builder and subcontractor.

Mr. Paul Wojciechowski stated he is the owner of All-County, Inc. He reviews data acquired in the field and is involved in the preparation of grading and sediment erosion control plans and Subdivision Plans. He is a licensed professional surveyor and has been with All County for 33 years. He is familiar with the property that is the subject of the Application, and he prepared Exhibit A-2. He stated the property is 24,000 square feet and rectangular in shape. It has 129 feet of frontage on Deerpath Lane. The lot is zoned R-2/medium density, and the minimum lot that could be obtained would be 12,500 square feet so that this lot is almost twice the size of the minimum lot required. The surface

flows from rainfall flow to the northwest corner which is from back to front with a moderate slope. Mr. Wojciechowski stated the natural resources on the lot include woodland associations because they have a grove of trees in the front that are 10” or more in diameter.

Three photographs on a single sheet were marked as Exhibit A-3. Mr. Wojciechowski stated he took the photos, and the top photograph was taken while standing on Deerpath Lane looking down the center of the property. The middle picture was taken from the center rear of the property out toward Deerpath Lane, and the bottom picture was taken standing in the middle of the proposed dwelling looking out the back. Exhibit A-2 was noted where it indicated “proposed dwelling”, and Mr. Wojciechowski stated this is the location where he was standing when he took the bottom photograph.

Mr. Murphy asked if there are any other natural resources beyond the woodland association previously noted, and Mr. Wojciechowski stated there are not.

Mr. Murphy asked what is meant by “woodland association,” and Mr. Wojciechowski stated a grove of trees could be woodland association depending on their caliper. He stated the reason for mapping woodlands from the rear right corner of the proposed dwelling into the rear property line was because there were two trees involved and their canopies were touching, so by definition that area under the canopies is woodlands. Mr. Murphy asked if there is any area on the lot shown in Exhibit A-2 that would not be characterized as a woodlands association; and Mr. Wojciechowski stated there is an area in the left rear where it is noted “topsoil stockpile” and on the right side of the property toward the back there is also an open area.

Mr. Murphy noted the box in the middle of the lot on Exhibit A-2 which is identified as “proposed dwelling,” and asked what this rectangle represents; and Mr. Wojciechowski stated it represents a building area for the site of approximately 2,600 square feet. Mr. Murphy asked what considerations were made when Mr. Wojciechowski located the proposed footprint of the home in the location depicted on Exhibit A-2, and Mr. Wojciechowski stated the primary consideration was the grading and an attempt to avoid disturbance of the woodlands area. He also wanted to take into consideration the alignment of the existing homes on the street and the privacy of the neighbor to the left, and to make sure they were far enough away from the trees on the right property line so that any construction would not have a negative impact on their roots. With regard to the grading, he stated there would be a flow from the proposed house out to a center point in the rear yard at which point it swales and wraps around the house so that no water would run into the house. He stated they wanted to have positive drainage away from the proposed home and to direct the stormwater toward the front of the house to Deerpath Lane. Mr. Wojciechowski stated in order to pull the water from the rear of the proposed house on the right hand side he had to create a fairly generous swale, and he also wanted to stay away from the neighbor’s tree protection zone. He stated he could not bring the water around the left side of the proposed house with the driveway on the left side.

Mr. Murphy asked how many trees are located in the proposed footprint that will need to be removed in order to construct the dwelling, and Mr. Wojciechowski stated it would involve approximately twenty-five trees. All the trees are identified on Exhibit A-2.

Mr. Wojciechowski stated the proposed front of the house is located along the roadway approximately the same distance as the other homes are off the roadway.

Exhibit A-4 was marked which is a single-sheet plan and the lower right hand corner is labeled, "Makefield Lakes." Mr. Wojciechowski stated he had some old photographs from an aerial taken of Lower Makefield in 1985 by Thomas Tyler Moore and Associates, and recognizing that some of these homes had additions placed on them, he was trying to give the Board a visual to see approximately the size of the proposed home and where the proposed home would be located in comparison with the other homes in the community. Exhibit A-4 does not show any of the additions that have been constructed to the existing homes. The proposed lot is highlighted in yellow on Exhibit A-4. The "box" shown is setback the same distance from Deerpath as the other existing homes.

Exhibit A-2 was noted where a topsoil pile is located in the rear, and Mr. Murphy asked if the home could be built in that location; and Mr. Wojciechowski stated he made an attempt to move the home back to see if he could remove less trees, and the problem they had was that in the front of the lot between the front property line and the building setback line, the lot dips down and then back up toward the road so that no matter where he put the home to get good drainage, he would have to grade the area where the house is currently proposed anyway.

Mr. Murphy noted Exhibit A-4 and the footprints of the homes immediately surrounding the area of Lot #36 and asked if he has calculated the footprint of those other homes, and Mr. Wojciechowski stated he did. Exhibit A-5 was marked which is an annotated version of Exhibit A-4 which has the approximate square footage of the other homes. Mr. Wojciechowski stated the range of the footprints as they existed in 1985 was 1800 square feet to 2700 square feet.

Mr. Murphy stated Mr. Wojciechowski testified that the minimum net lot area in the R-2 Zone was 12,500 square. Mr. Murphy stated this minimum lot size is based on a certain amount of resource protected land being preserved, and Mr. Wojciechowski agreed. He stated resource protected land is 47%.

Mr. Murphy noted Exhibit A-2 where Mr. Wojciechowski identified in Note #2 that the net lot area of the subject lot is 13,260 square feet, and Mr. Murphy asked why this calculation differs from the gross lot area. Mr. Wojciechowski stated the net lot area is calculated by subtracting the resource protected land from the gross lot area. Mr. Murphy

stated it appears pursuant to Note #1 that the lot has to have a minimum lot width of 110 feet, a minimum front yard of 40', two minimum side yards of 15', a minimum rear yard of 50', a maximum building height of 35', and a maximum impervious surface of 18%; and Mr. Wojciechowski agreed. Calculations shown on Note #3 on the Plan indicate that the proposed impervious surface is less than 18% and they meet the minimum front, side, and rear yards.

Mr. Murphy stated the one issue raised by this Application deals with the extent of woodland disturbance and Mr. Wojciechowski agreed. He stated under the Ordinance they are permitted 30% of woodland disturbance. Mr. Murphy stated he noted earlier that the site is entirely classified as a woodlands association; and Mr. Wojciechowski agreed. Mr. Murphy asked if they could construct any dwelling on the site regardless of size in such a way that it would not disturb more than 30% of the woodlands association; and Mr. Wojciechowski stated they could not and added there is no building envelope at all based on the fact that the entire lot would be classified as a woodlands association.

Mr. Murphy stated the plan depicts the disturbance of approximately twenty-five trees which gives rise to the calculation that if they disturb twenty-five trees the total woodland disturbance would be 76%. Mr. Wojciechowski stated he has had discussion with Mr. and Mrs. Mack about their willingness to replant a number of those trees following the construction of the home; and they are prepared to replant 50% of the trees that would need to initially be removed.

Mr. Murphy stated the Application also indicates that the front and rear yards as depicted on the Plan would be measured from the front and rear lot lines. He asked what would the Ordinance typically require. Mr. Wojciechowski stated typically he would outline 70% of the woodland area that would be protected, and the Ordinance requires that from that protection line they establish the building setbacks according to Zoning. He stated there would be no way to measure a front yard or a rear yard because the entire lot is subject to the woodland association category. He stated in order to identify the suggested location of the house to measure the front and rear yards from the rear lot line for the 50' rear yard and from the edge of lot on Deerpath, 40' back.

Mr. Murphy asked if he believes that the location of the home on the lot as depicted on Exhibit A-2 minimizes the impact on the other adjacent properties, and Mr. Wojciechowski agreed and stated it conforms to the location of the homes on the other properties. The proposed home is located in such a fashion to maximize the setback to the rear and minimize the impact to the property owners on either side.

Mr. Murphy stated on the Plan the access to the lot is from the right side if you are standing on Deerpath, and Mr. Wojciechowski agreed. Mr. Murphy stated there is currently a curb cut accessing the lot on the left side, and he asked why he elected to

move the driveway from the original curb cut location. Mr. Wojciechowski stated he did this because of trees, grading purposes, and because it provides more setback from the neighbor to the left.

Mr. Gruen asked Mr. Wojciechowski if he used an arborist, and Mr. Wojciechowski stated he did not. He stated he did not define the types of trees, but was able to determine the drip lines. Mr. Gruen asked who is the owner of the property to the right of the subject project, and Mr. Wojciechowski stated it is Susan Mack who is also the owner of the subject property.

Mr. Malinowski asked Mr. Mack if he intends to occupy the property, and Mr. Mack stated he does not.

Mr. Donaghy stated the Township is participating and is primarily concerned with the issue of tree removal and replacement of some of those trees. They would be satisfied if the Variance were granted that there be a Condition that they would replace at least 12 trees of a size and location satisfactory to the Township engineer; and they have indicated that they would do this. Mr. Majewski stated the Township has a list of native trees in the SALDO, and they would work with the Applicant to come up with trees that would be suitable. They would want them to be 2 ½” to 3” caliper trees. Mr. Murphy stated they would agree do the Condition noted by Mr. Donaghy.

There was no one present to speak in favor of the proposal.

Ms. Sue Fugate was sworn in and stated she is the neighbor to the left and she is not necessarily in opposition, but is concerned that there was testimony that there will be a swale on the side where her house is located. She stated the water naturally flows from that lot to her lot. She appreciates that they are trying to preserve her privacy. She wanted to make sure that the swale runs out to Deerpath.. Mr. Murphy stated the Applicant has no objection to this and any relief the Zoning Hearing Board would grant would be conditioned on the Applicant obtaining a Building Permit from the Township; and before a Building Permit were issued, Mr. Majewski would review this for grading, and would insure that the water will be directed toward Deerpath and not to the neighbor on the left. Mr. Wojciechowski stated most of the water rather than running out to Deerpath is currently running onto the neighbor’s property, and this is why the grading activity is more than normal. They will take the water and run it on their side of the property out to Deerpath as opposed to the current path which is toward the neighbor’s lot towards the front.

Mr. Donaghy stated the Township engineer would be reviewing the Plan to make sure that it complies with the appropriate Township Ordinances. Mr. Majewski stated they are required to submit a Stormwater Management Plan; and now that they are aware of this specific issue, they will make sure that this is thoroughly addressed.

Mr. Bamburak stated if the dwelling were to be moved slightly to the northwest, it seems that they would be able to save a number of trees of substantial size. Mr. Smith stated he shares this concern; and if they move the footprint 1 ½” to the right on the Plan and 1” up, they would still be within the setback lines and the footprint of the house at that point would only impact two trees. He stated the Plan as proposed puts the dwelling right on top of a number of very large trees, and it will take a long time to replace them if they install trees of 2 ½” to 3” caliper. Mr. Murphy stated they would be willing to work further with the Township engineer to re-locate the footprint along the lines that the Board has suggested. He stated they have had some initial conversations with Mr. Majewski about this already. He stated they would be willing to try to maximize the number of trees that could be preserved.

Mr. Gruen stated he would like to have an arborist look at the trees as there may be certain trees that should not necessarily be saved. Mr. Murphy stated he would be willing to do this through Mr. Majewski’s office. Mr. Gruen stated it appears that the only trees being saved on the site are those which are adjacent to property to the right also owned by Ms. Mack. Mr. Gruen stated he feels it will take a minimum of 30 years to replace the trees being taken down if they are only installing 2 ½” to 3” caliper trees. Mr. Majewski stated it could take as little as fifteen years to grow to 10” caliper.

Mr. Yasha Kresh was sworn in and stated he is concerned about the environmental impact and appreciates the attempt to drain the water to Deerpath noting he lives on the corner of Deerpath and there is a high water table. He stated next to him there is a vacant property with numerous trees falling. He stated the soil is mostly clay which is not good for absorption of water.

Mr. Kristin Solor was sworn in and stated she lives on Edgewood Road diagonally in back of the property. She stated she wants to make sure the trees in the back of the property are saved. Mr. Murphy stated none of those trees will be removed. Ms. Solor stated the water level is high in the area between her property and this property, and there is basically a pond and any additional water would create a problem.

The public Hearing portion was closed. Mr. Murphy moved Exhibits A-1 through A-5. Mr. Bamburak moved, Mr. Zamparelli seconded and it was unanimously carried that the relief be granted as requested subject to the Condition that the Applicant replace 50% of the trees to the satisfaction of the Township engineer; and that the Applicant work with the Township engineer to possibly relocate the dwelling to conserve as many of the existing trees as possible.

APPEAL #08-1495 – DONNELL PROPERTIES

Mr. Peter Stratton was sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-sheet drawing entitled “Site Plan” received by the Township on 10/14/08, and this was marked as Exhibit A-2. Mr. Stratton stated he is President of Atlantic Construction and is a general contractor representing Julie O’Donnell from Donnell Properties. He stated Ms. O’Donnell purchased this classic, historic Dutch Colonial in December of last year and has retained them to do a comprehensive restoration of this 75 year old home on Yardley-Morrisville Road. He stated the house had a 30’ by 17’ addition added which was not in character to a Dutch Colonial. He stated they submitted a Demolition Permit to remove this addition, and they found out that the addition had been built without a Permit. He stated concurrent with the demolition they asked to include a smaller addition to the house of 16’ by 20’ not realizing when they submitted the Building Permit Application that the prior addition was never approved and that when they included the smaller addition they exceeded the 18% impervious limitation by approximately 250 square feet or 1.25% over the 18% permitted. He stated they are asking the Board to grant relief for the 250 square feet and would like to build the smaller addition. He stated the current kitchen is 14’ by 16’ and with the addition they will expand the kitchen and bring the laundry room from the basement, which is an unfinished 75 year old basement, up next to the kitchen. He stated the old addition was 4,042 square feet of impervious or 20.1%, and the new addition with the old addition demolished would bring them down to 3,869 square feet or 19.25%.

Mr. Malinowski stated they are actually decreasing the impervious surface from where it had been with the old addition and Mr. Stratton agreed.

Mr. Toadvine asked about the legal owner of the property, and Mr. Stratton stated it is Donnell Properties. He is the general contractor and has no equity interest property. Mr. Toadvine asked if anyone was present from Donnell Properties, and Mr. Stratton stated Julie O’Donnell is present.

Mr. Stratton stated many of their clients chose to demolish old buildings, and to Ms. O’Donnell’s credit she decided not to do this. He stated they are doing a comprehensive restoration of the property and it will be restored back to its original character. He feels the Township will be proud that the building has been restored.

Ms. Julie O’Donnell was sworn in and stated she is the legal owner of the property. Mr. Malinowski asked if she will occupy the property, and Ms. O’Donnell stated they have not decided this yet.

Mr. Donaghy stated the Township is not participating.

Ms. Jessica Gorman, Greenridge Road was sworn in and stated they are delighted that the property is being fixed up and their only concern is the drainage as they do get run off from the property.

Ms. Robin VanNote was sworn in and stated he is the husband of Jessica Gorman and stated their northwest corner abuts the southwest corner of the subject property. He stated he is not sure that the drawing is accurate, and Mr. Stratton stated it is the Township plot plan. Mr. VanNote noted areas of impervious surface on the Plan. Mr. Stratton stated he has indicated a concrete pad which they are planning to remove. He showed a picture of the back of the subject property and stated the slope from the subject property is toward his home, and particularly noted the 1996 storm. Mr. Smith asked how long they have had this drainage problem, and Mr. VanNote stated it is always a problem. Mr. Smith asked if the old addition was on the property during the 1996 storm, and Mr. VanNote stated he did not live at the property during that time. Ms. Gorman stated she purchased her home in 1989, and at that time there was a porch on the subject property which was not enclosed. She believes that sometime within the next two to three years, the owner enclosed it. She stated the back of the property was incredibly overgrown so she is not certain as to the size of the porch. Mr. Smith stated they are eliminating the old addition and are putting on an addition that is smaller than what was there and he feels because it will be smaller, it may result in less run off. Ms. Gorman stated prior to coming to the meeting, they had no idea what they were proposing.

Mr. Gruen asked about the turn around, and Mr. Stratton stated the Plan is to remove the concrete pad in the rear and the turn around. They have re-graded the back lawn and reseeded it. He stated he feels the situation will improve and will work with the Township to improve the situation and not make it worse. Mr. Majewski stated he has looked at the property although he has not walked the entire property. Mr. Smith asked if the drawing accurately reflects all of the impervious surface on the property, and Mr. Majewski stated with the exception of the turn around which he did not notice when he looked from the front of the property, he feels the Plan accurately reflects what is on the property. He feels the calculations are accurate although they do not include the turn around. He stated if the turn around was included this would raise the proposed impervious surface to approximately 19.8%. Mr. Smith stated this would still be less than the pre-demo impervious surface, and Mr. Majewski agreed. It was also noted that they are planning to remove the turn around.

Mr. Toadvine asked if the Applicant was agreeable to the 19.25% calculation, and Mr. Stratton agreed.

The Public Hearing portion was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant the Variance in the way of total impervious surface of 19.25%.

APPEAL #08-1496 – JOSEPH AND JODY FONTE

Joseph and Jody Fonte were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one sheet Plan time stamped by the Township 10/14/08. The Plan was marked as last revised 9/30/08, and this was marked as Exhibit A-2.

Joseph Carracappa, attorney, was present and stated on 10/07 the Fontes were issued a Permit for an in-ground pool with no decking after the Zoning Hearing Board by a two to two vote denied a request for a Variance from impervious surface. He stated the coverage at the time was 19.4%. He stated after the pool was constructed with the grass up to the edge of the pool, the Township inspector determined that something more was needed than grass for the hand railings and ladders for the pool, and the Permit was revised to allow for an 18” concrete coping around the pool’s perimeter. He stated the coping added 147 square feet of impervious coverage. He stated the coping was deemed by the Township to be a de minimis increase to the impervious surface. He stated with the coping added the total impervious was 20.2%. He stated the Fontes are now seeking an additional 3.7% for the installation of a concrete decking and walkway from the pool to the back of the house. He stated the decking and walkway have already been installed without a further Permit. He stated the decking and the walkway total 622.75 feet of coverage and will take the total impervious surface to 23.9%. He stated a Variance is necessary, but the Fontes are prepared to take away some other impervious coverage particularly from the driveway if this would allow for the grant of the Variance.

Mr. Fonte was asked to describe the topography of his property in the rear, and Mr. Fonte stated the slope of the land in the back goes from the rear fence line toward the street and also from the left side of the Plan down toward the right side of the Plan. The pool is at an elevation of about 8’ higher than the main floor of the dwelling. He stated the right side of the Plan shows a very gentle slope and the left side has a slightly steeper slope.

Three photos were presented and marked as Exhibits A-3, A-4, and A-5. Exhibit A-3 is a photo of the walkway to the Pool. Exhibit A-4 is a photo of the walkway to the house. Exhibit A-5 is a photo of the rear yard.

Exhibit A-3 was noted showing the pool above the back of the property, and Mr. Fonte stated it is approximately 8' from the pool to the back door. He stated without a walkway between the pool and the house, they would be walking on grass. He stated there was a period of time when they were utilizing the pool without the walkway and they found it to be quite difficult and dangerous due to the wet grass from the pool water.

Mr. Smith stated asked if this has already been built, and Mr. Fonte agreed. Mr. Smith asked if it was built without a Variance request, and Mr. Fonte agreed. Mr. Smith asked if they obtained a Building Permit, and Mr. Fonte stated they did not. Mr. Fonte stated the Pool has a Building Permit. Mr. Smith asked if there was a Building Permit or Variance request for the walkway, and Mr. Fonte stated there was not. It was noted there was an initial Variance request which was denied. Mr. Smith stated they built it anyway in spite of the fact that the Variance request was denied, and Mr. Carracappa stated the Variance request was for the pool, and they were permitted to build the pool based on no additional impervious surface. Mr. Smith stated they then added more impervious surface, and Mr. Fonte agreed.

Mr. Carracappa asked if they have had any issues with flooding, water run off, or excessive water flow on the property, and Mr. Fonte stated they have not.

Mr. Caracappa noted the area of the property shown on Exhibit A-5, and asked if this is the area where the water would flow from the pool, and Mr. Fonte stated it is and stated the majority of the water would be flowing down and to the right as shown in Exhibit A-5.

Mr. Caracappa asked if there is some impervious area on the property that could be removed to reduce the amount of impervious surface, and Mr. Fonte stated there is. Mr. Smith asked if this would include the pathway, and Mr. Fonte stated this was not their intention, and they would remove impervious surface at the driveway. He stated the driveway as shown on the Plan goes from the curb to the front entrance of the house and has a front entrance garage. He stated the section on the left hand side of approximately 10' by 21' is used for parking, and if they removed this 21' by 10' square area it would reduce the impervious surface to 22.7%. He stated they could remove the entire driveway but it would be cost prohibitive and an eyesore. He stated there is a walk out on the right side of the house that is also concrete and is approximately 6' by 17' but other than that there is no other impervious surface that could be removed.

Mr. Gruen stated they could replace the concrete steps with wooden steps, and Mr. Fonte stated they had considered installing wooden steps but due to the fact that it would be wet wood, they felt it would be dangerous for the children. Mr. Smith asked about a composite material. Mr. Gruen asked when they installed the steps, and Mr. Fonte stated there were installed this past summer. The pool was installed in October, 2007. Mr. Bamburak asked if they have a one-car garage, and Mr. Fonte stated

it is a two-car garage. Mr. Bamburak stated he assumes they are not proposing to remove the entire “dog-leg” of the driveway and would just remove enough so that they could get the car into the second bay of the garage, and Mr. Fonte agreed.

Mr. Bamburak asked their thinking when they were denied by the Zoning Hearing Board and then went ahead and built this anyway. Mr. Fonte stated they were concerned about the safety of the children and felt that the amount of 600 square feet out of 16,000 square feet was negligible, and they had no stormwater run off so they felt that the intent of the Ordinance was met.

Mr. Bamburak asked about use of a composite material with slats between the boards rather than concrete so that they could get some credit for impervious surface area. Mr. Majewski stated it would depend on the method of construction.

Mr. Toadvine stated it is his understanding that at some point in time after the pool was constructed there was a decision that there needed to be some impervious coverage added, and Mr. Habgood agreed and stated the Building Inspector indicated that for some of the hardware for the pool such as the stairs, needed to be installed in impervious surface for safety. He stated the Applicant sent a letter to the Township explaining this and it was agreed that an 18” coping would be installed around the pool, and it was agreed that this would be considered a de minimis increase in the impervious surface. He stated it was noted to the Applicant that any additional increase in impervious would require a Variance to be obtained from the Township Zoning Hearing Board. Mr. Toadvine stated the 20.2% was permitted by the Township, and Mr. Habgood agreed. Mr. Toadvine stated if the 10’ by 21’ area of the driveway and the 6’ by 17’ concrete pad were to be removed, this would be 312 square feet and this would equal 22.1% impervious surface. Mr. Toadvine asked if there was any discussion about stormwater remediation systems such as seepage pits, and Mr. Fonte stated one of the options they were thinking of was in the area of the right side of the back property line they were offering to put in a small retention pond that would retain the water and allow for percolation so that it could hold some of the run off.

A short recess was taken at this time. The meeting was reconvened at 9:15 p.m.

Mr. Donaghy stated the Township is not participating.

Mr. Maloney stated when the Board of Supervisors made the decision not to participate, they were unaware that the construction already existed at the time of the Application.

Mr. Bamburak stated Question 9 on the Appeal states, “Has a previous Appeal or Application for special exemption or Variance been filed for the property,” and they checked no when in fact there was. Mr. Fonte stated he checked “no” on the reason that it was applying to the pool and this was a separate issue – the construction of the

walkway. Mr. Fonte stated he understands that everyone feels that this was done in defiance of the Board's previous decision, and he is embarrassed and would like to apologize. He stated he meant no disrespect, and acknowledges that the fault was his.

Mr. Gruen stated the Impervious Surface Ordinance does not apply only to the individual property but is part of the entire Township.

Mr. Greg Doyle, 1168 Temple Drive, was sworn in and stated he is directly below and to the right of the subject property. He stated since the construction of the pool and steps, he has not seen any excess water toward his property.

Mr. Brad Child was sworn in and stated his property is across the street from the subject property, and he is the father of four children who are friends with the Fonte children and his children look forward to using the pool. He stated the elevation of the pool from the house creates a problem because of the grade. He does not feel the walkway causes a problem with run off and feels what they have done makes it safer for his children.

Ms. Jane Chickola, 1152 Temple Drive, was sworn in and stated she has lived there for fifteen years and there has been no difference in the run off since they installed the pool. She stated there is need to get up to the pool in their rear yard, and the Township needs to consider the safety factor.

Mr. Malinowski noted the Findings of Fact and Order for Appeal #07-1443 dated 9/18/07, and this was marked as Exhibit B-1. He stated there was a tie vote not to grant the Variance the previous time this was before the Zoning Hearing Board.

Mr. Gruen stated it seems that there is a large patio at the foot of the steps, and Mr. Fonte stated it is an area that connects the walkway to the decking around the pool; and it was expanded to get both sides of the decking of the pool so it is in essence a small patio. It is 14' by 20'.

There was no one present to speak in opposition. The testimony was closed.

Mr. Smith moved and Mr. Zamparelli seconded that the request be granted under the following conditions: That stormwater run off remediation systems be put in place to the satisfaction of the Township engineer so as to effect an effective impervious surface on the property of 19.4% which is the amount that the property had before the Board denied the previous request for Variance. In addition, that the areas discussed during testimony, that being the part of the macadam drive and the concrete pad, be removed which is 312 square feet of impervious coverage.

Mr. Gruen stated he would support the Motion if they would also reduce the 14' by 20' patio. He feels they could reduce it to 6' by 20' which would still make it safe to get to the pool, and this would remove an additional approximately 120 square feet which would put them almost at the required impervious surface. Mr. Malinowski stated the storm management system would effectively do this if done correctly without them having to remove the patio. Mr. Gruen stated it would have to be done correctly and maintained.

Motion as originally stated carried with Mr. Malinowski, Mr. Smith, and Mr. Zamparelli in favor and Mr. Bamburak and Mr. Gruen opposed.

APPEAL #08-1483, 1483 (A), 1483 (B) – T-MOBILE NORTHEAST LLC

Eric Goldberg, attorney, was present. Mr. Toadvine stated this matter was continued a number of times and there have been amendments to the Application. He stated a trial balloon was floated over the subject area on October 21. Mr. Toadvine stated no formal testimony has been taken yet.

Mr. Goldberg stated this matter is about the telecommunications carrier's ability to provide reliable coverage throughout Lower Makefield Township. He stated the Lower Makefield Township Zoning Ordinance allows telecommunications facilities such as the one proposed by T-Mobile in certain limited areas throughout the Township. He stated there are three Overlay Districts within the Township, and each one of these Overlay Districts already has a tower on it. He stated T-Mobile is already on all three of these towers. He stated there is a fourth tower in the Township that is not located in an Overlay District which is the one outside the Municipal Building, and T-Mobile has an antenna on this tower as well. He stated the goal of the Overlay District is to have telecommunication facilities centered around I-95. He stated the Ordinance was created in 1997, and at that time the expectations were extremely different than what they are today for mobile technology. He stated today people expect to have constant, reliable coverage when using their mobile phones. He stated the telecommunication companies need to enable people to remain in contact, and it is impossible for T-Mobile to do that as the Ordinance is presently written as there is no place for T-Mobile to provide coverage in a certain area absent a Use Variance.

Mr. Goldberg stated there is currently unreliable coverage in a certain portion of Lower Makefield around Big Oak Road in between Yardley Road and Makefield Roads. He stated in order to remedy this gap in coverage, T-Mobile is proposing a 100' monopole. If the Board were inclined to grant this, T-Mobile would offer a 100' tree pole although typically T-Mobile does not offer this as they do not feel it is aesthetically appropriate for most situations; however, this situation is different as there is already existing mature

vegetation on the site proposed, and they feel a tree pole would be more appropriate in this situation. Mr. Goldberg stated there would be nine antennas at the top of the structure and equipment cabinets and other associated equipment on a concrete pad at the base of the tower.

Mr. Goldberg stated in terms of the theories that relief is being requested, it is under traditional State law as well as the Federal Tele-Communications Act of 1996. Five Variances are being requested – a Use Variance, a lot size Variance, a height Variance, Variance for landscaping as there is already landscaping around the proposed compound, and a Variance with regard to distance to existing structures.

Mr. Goldberg stated he previously spoke to the Zoning Hearing Board Solicitor and the Township Solicitor as to how it would be best to proceed. He stated there are three Witnesses they would like to present – one relates to radio frequency engineering, a second to site acquisition, and the third relates to the civil side of engineering. He does not feel they will have time this evening to complete all three, and there will be a need for at least one more Hearing.

Mr. Toadvine stated in addition to the five Variances, they have also raised a Challenge; and Mr. Goldberg stated they have raised a Challenge to the Ordinance under the Federal Tele-Communications Act, and it is T-Mobile's contention that if relief were not to be granted it would be in violation of the Federal Tele-Communications Act which precludes a Municipality from prohibiting or discriminating among telecommunication carriers. He stated while he does not have a copy of the Act, he could provide this to the Township.

Mr. Smith asked what telecommunication carriers is he contending are being treated more favorably than T-Mobile, and Mr. Goldberg stated the belief is that T-Mobile is being discriminated against by virtue of the fact that the frequency that it propagates at is 1900 megahertz and some of the other carriers are at 800 megahertz. By virtue of the pure law of physics, a carrier with 800 megahertz is able to have a signal that goes further than one at 1900 megahertz. T-Mobile is unable to provide reliable coverage within the area by virtue of its signal strength. Mr. Smith asked why T-Mobile is at 1900 megahertz and the others are at 800. Mr. Goldberg stated this is by virtue of the License they were granted by the FCC, and there is nothing that can be done to change that. Mr. Gruen stated it would appear that it was the FCC that discriminated.

Mr. Smith stated he is familiar with the intersection of Big Oak and Makefield Road and has stood at the gas station at this location many times and his cell signal is fine so he does not understand why T-Mobile would be different from any other carrier. He stated none of the other carriers have indicated they have a need for a tower at the proposed location. Mr. Goldberg stated the radio frequency engineer will explain this, and the evidence will show that there is a gap in coverage for all of the other existing carriers as

well. Mr. Smith stated he has Verizon and has never had a problem at that location. Mr. Goldberg stated it is their belief that there is a gap in this general area of Lower Makefield Township, and they have proof to substantiate this belief.

Mr. Gruen asked if the Board approves the request do they plan on leasing spaces to other carriers, and Mr. Goldberg stated they do. Mr. Toadvine stated they are required to do this.

Mr. Bamburak asked the plan to remove the tower in the future when the technology makes the towers obsolete, and Mr. Goldberg stated T-Mobile would be willing to put up a Bond in the event that the tower becomes obsolete. Mr. Gruen stated he believes there is a part of the Township Ordinance that requires this.

Mr. Toadvine asked if the Applicant updated the Applications as they continually amended the Applications, and Mr. Goldberg stated the most recent amendment includes all of the requested Variances. He stated the most recent was a letter dated 10/22/08. The Application dated 10/22/08 was marked as Exhibit A-1. The Plans which came with the original Application are still accurate according to Mr. Goldberg, and these Plans dated 5/9/08, last revised 6/6/08 consisting of eight sheets were marked as Exhibit A-2. Mr. Donaghy asked if the Application marked as Exhibit A-1 supersedes all previous Applications, and Mr. Goldberg stated it does.

Mr. Goldberg marked as Exhibit A-3 the Lease dated 5/23/08 and marked as Exhibit A-4 a copy of the FCC License.

Mr. Bassem Iskanver was sworn in and stated he is a consultant for T-Mobile as a Senior Radio Frequency Engineer and has been working in the wireless industry for over eight years. He has a degree in electronic and communication engineering. He has been working for T-Mobile for over three years. He has also worked as a consultant for most of the major wireless carriers. He has designed over 1500 cell sites and has testified before Boards in Pennsylvania, Delaware, and New York; and he has been qualified as an expert. His duties as a radio frequency engineer include monitoring T-Mobile's network, making sure that the sites are functioning properly, looking for gaps and areas where T-Mobile needs to improve coverage, and proposing ways to improve to improve coverage gaps in the area such as building new sites or optimizing existing sites. Mr. Goldberg offered Mr. Iskanver as an expert in radio frequency engineering.

Mr. Donaghy stated the Township is a Party to this matter and has no objection.

Mr. Goldberg asked Mr. Iskanver to describe how wireless communications systems operate and why there is a need for a facility such as the one proposed for the site. Mr. Iskanver stated a wireless system works by sending and receiving very low power frequency signals to and from antennas on a tower or any structure and a customer's cell

phone. He stated because of the low power that is involved, the signals only cover a certain amount of geographical area; and in order for a system to function properly, many sites are needed such as the one proposed this evening to provide continuous coverage so that a customer traveling through an FCC licensing area will be able to maintain a phone call without dropping it.

Mr. Goldberg asked what happens where there is no overlap at sites, and there is unreliable coverage. Mr. Iskanver stated if the signal level drops below a certain amount, it will result in a dropped call; and this is a gap in service as you are unable to make, maintain, or receive a phone call.

Mr. Goldberg asked if this is a line of sight technology, and Mr. Iskanver stated it is. He stated this means that the signals that are being transmitted and received from the antennas are so low powered that anything in the signal's path, has an effect. He stated as the signal travels through the air, the distance between the antenna and the cell phone will have an effect in the amount of signal that is received. He stated if there is anything else that the signal has to penetrate to get to the cell phone such as a roof of a car, or a wall or window of a house, it will also decrease the signal strength. He stated the higher the site is, the better it will be able to serve the surrounding area so height is an important factor in the line of sight technology.

Mr. Goldberg asked about the proposed facility, and Mr. Goldberg stated it will consist of the structure to hold up the antennas and radio equipment at the bottom of the site. The link between the antennas and the radio equipment is done via coaxial cables that will run through the pole itself. The antennas transmit the signal from a location elevated enough above the clutter so that it can cover a larger geographical area. The equipment cabinets to be located at the base of the tower are what tie in the site to the rest of the network, the land line system, and the other wireless networks. He stated the only wireless part of a wireless network is the path of the signal between the antennas and the cell phones and everything else is done through wired lines.

Mr. Goldberg asked how the signal is transmitted, and Mr. Iskanver stated the signal is received and modulated in the radio cabinets and transmitted through the coaxial cables to the antennas and the antennas would then send and receive the signals from them to the cell phones wirelessly and back to the network.

Mr. Goldberg stated signals can be impacted by topography or density of objects, and Mr. Iskanver agreed and stated any obstruction to a radio signal has a weakening effect on the signal and the higher density of the object has a much more weakening effect. He stated if a signal travels through free space it corresponds to the frequency and the distance between the antenna and the phone, but if it has to penetrate a leaf on a tree, it will incur some loss, and if it has to penetrate a roof of a house or commercial structure it will incur even more loss. He stated at a certain point, the signal will be low enough that the phone will not be able to detect it, thus creating the coverage gap.

Mr. Goldberg asked if T-Mobile is an FCC licensed telecommunications carrier, and Mr. Iskanver agreed. Mr. Goldberg asked if it is mandated by the FCC to provide reliable wireless communication service for the area, and Mr. Iskanver agreed. Mr. Goldberg asked if the area consists of suburban Philadelphia including Bucks County and Lower Makefield, and Mr. Iskanver agreed. Mr. Goldberg asked if the proposed facility is necessary for T-Mobile to provide reliable coverage in the area, and Mr. Iskanver agreed.

Mr. Goldberg asked Mr. Iskanver to describe the evolution of the use of wireless phones by the general public, and Mr. Iskanver stated from the FCC Website, he learned that in June, 1997 when the Township Ordinance was created there were 48 million wireless subscribers and in June, 2006, there were 219 million in the United States. He stated in the last six years, the wireless subscribers went from 109 million in 2002 to 233 million.

Mr. Goldberg asked about the number of people who use wireless phones as their sole telephone and no longer have a land lines.

Mr. Smith stated they would all agree about the current use of cell phones. Mr. Toadvine asked if they would need to stipulate to this for their record, and Mr. Goldberg stated they would like to have some evidence to this. He stated they could make an offer of proof as to the increased use of cell phones. Mr. Toadvine stated could they stipulate that cell phone use has quadrupled in the last ten years, and Mr. Goldberg stated this is one fact as well as the fact that one in five households do not have land lines anymore and exclusively use wireless technology. Mr. Smith asked about this statistic for Lower Makefield Township, and Mr. Goldberg stated they do not have this number. Mr. Smith asked if all they have is a Nationwide number, what relevance does this have to Lower Makefield, and Mr. Goldberg stated it is relevant in that one can presume. Mr. Smith stated he would not want to presume, and unless they have numbers for Lower Makefield, he feels it is irrelevant as to what the numbers are Nationwide.

Mr. Toadvine asked Mr. Donaghy if he would stipulate to those two facts; and Mr. Donaghy stated he cannot stipulate to facts for which he has no basis although he does not dispute the facts.

Mr. Goldberg stated that almost one in five households are exclusively using a wireless phone, and Mr. Iskanver agreed. He stated approximately 89% of adults have a mobile phone. Mr. Goldberg stated the minutes of use and the type of services a mobile phone can provide has increased drastically over the years, and Mr. Iskanver agreed and stated it is expected to continue. Mr. Goldberg stated people expect to use mobile phones in locations other than cars, and Mr. Iskanver agreed.

Mr. Goldberg asked if T-Mobile needs reliable in-building coverage to compete in the marketplace, and Mr. Iskanver agreed. Mr. Goldberg asked if the customers of T-Mobile expect reliable, in-building coverage, and Mr. Iskanver stated they do.

Mr. Goldberg asked if there is a gap in coverage in the area, and Mr. Iskanver stated there is an in-building gap of about 2.65 square miles which is the area around Big Oak Road horizontally from Stony Hill Road to Yardley Road and vertically from Hedgerow Drive to Deerpath Lane. He stated it extends from the proposed site 1.45 miles north to Deerpath Lane, 1.1 miles northeast to Yardley Road, 1 mile east to Keating Drive, .86 miles southeast to Trenton Avenue, ¼ mile south to Peaceful Drive, and .9 miles west to Stony Hill Road.

Mr. Smith asked how they define a gap, and Mr. Iskanver stated a gap is the ability of a customer to make, maintain, or receive a phone call. The gap in this area is an in-building gap inside a house or apartment. Mr. Smith stated some of the area they have described is outside of Lower Makefield, and Mr. Iskanver stated he feels more than 80% of the gap is in Lower Makefield. Mr. Smith asked why they did not petition some other Township to install a tower as it appears they have gaps in other Townships as well. Mr. Goldberg stated they will discuss this and agreed there are gaps in other areas of the Delaware Valley besides Lower Makefield. He stated putting the tower in another Township will not address this particular gap in coverage. Mr. Iskanver stated approximately 15% of this particular gap is in Falls and 85% is in Lower Makefield.

Mr. Toadvine stated he assumes that at some point the radio frequency expert will present an Exhibit which will be colorized and show areas of coverage, areas of minimal coverage, and areas of no coverage; and they will identify where they would have to place a tower to get coverage for the areas of no coverage, and Mr. Goldberg stated they will get to this although initially they are going to go over what sites they currently have that provide coverage within Lower Makefield.

Exhibit A-5 was marked entitled “T-Mobile Existing Sites in Lower Makefield,” and Mr. Iskanver stated this shows a map centered around Lower Makefield Township with the blue dots showing the existing on-air sites and the red dot showing the proposed site.

Mr. Smith stated the location of the proposed site appears to be just feet away from the Township border, and he questioned what difference it would make if they moved it across the Township border.

Mr. Goldberg asked how many sites are located within the borders of Lower Makefield Township, and Mr. Iskanver stated there are four and he identified them on the map as well as the location of their antennas on the existing structures. Mr. Goldberg asked if any of these sites can fill the existing gap in coverage, and Mr. Iskanver stated they cannot and there is also nothing that can be done to them to enable them to fill the existing gap.

Mr. Goldberg stated there are also sites outside the border of Lower Makefield that provide coverage in Lower Makefield, and Mr. Iskanver noted an SBA tower in Newtown, a tower in Falls Township, one in Morrisville, and one in Yardley Borough.

Mr. Gruen stated since there is a line of sight decrease, could they not obtain coverage they need by raising the antenna, and Mr. Iskanver stated while raising the antenna 50' would increase the coverage footprint of any site, most of the heights where their existing antennas are located are already 120' to 170'; and at that height above the clutter additional height would not increase much more the coverage footprint of the site because they are already above the clutter enough and the real restraint is the distance between the tower and the customer and not the height. Mr. Goldberg stated another restraint for their system is that their system works on two-way technology so the tower has to be able to "talk" to the phone and the phone has to be able to "talk" back, and the phones that are available today are very small and most have internal antennas and the battery sizes are very small. He stated the real limit of the coverage is not the site being able to talk to the phone, it is the phone being able to talk back to the tower.

Mr. Gruen asked about a "repeater" which is installed in the house so that it amplifies the signal so that they could talk back to the tower and asked why they could not give their customers these repeaters for their homes. Mr. Iskanver stated the amount of signals that are transmitted from a repeater is very, very small, and they would have to give a repeater to almost every other house to cover the gap. Mr. Gruen asked why they could not do this, and Mr. Iskanver stated it would be too many and would also cause other issues as they do not have the frequency spectrum for that kind of lay out.

Mr. Iskanver stated there is also a tower in Mercer County in Trenton which provides coverage to Lower Makefield. He stated there are four sites that are providing coverage inside Lower Makefield and six to seven that are on the borders outside of Lower Makefield which are also providing coverage inside and outside of Lower Makefield. He also noted the site of a tower directly south, southwest .9 miles of the proposed site in Falls Township where they are also co-located which provides coverage in Lower Makefield. Mr. Iskanver stated Lower Makefield is approximately 17 ¼ square miles, and they are trying to cover it with what is available and what is currently Zoned which are the three Overlay Districts plus the Township site; and with only these four sites it is physically impossible no matter what height they are at to cover that amount of geographical area under the T-Mobile frequency and provide reliable coverage.

Mr. Zamparelli asked if this tower is installed would it fill in all the gaps, and Mr. Iskanver stated it will not and will only fill in the gap surrounding that tower. Mr. Smith asked how many more towers they would need to fill in all the gaps, and Mr. Iskanver stated they would need several but he does not have an exact number on this. Mr. Iskanver stated it is not totally his decision where to put all the towers.

He stated he does not feel the proposed location is the best location, and the best location would be ¼ to ½ mile north which would be on top of someone's house. They proposed it at the subject location because this was a property that was not a house. It is a water tank property. Mr. Smith asked how many additional towers they would need if they were to put this antenna ¼ mile north of the proposed location, and Mr. Iskanver stated they would probably need three towers. Mr. Smith asked where those towers would be proposed to be located, and Mr. Iskanver stated he would suggest one would be in the northwest corner near Woodside Road as he noted on the map. He would also locate one in the southwest corner near Stony Hill where it crosses the railroad tracks. Mr. Smith stated even with the installation of the proposed tower under discussion, it will not solve T-Mobile's problems as far as coverage throughout Lower Makefield, and Mr. Iskanver stated it would solve the problem in this one area. Mr. Iskanver stated one site could not solve all of the problems. Mr. Smith stated if this site is approved, he assumes they will then come in with a request for additional towers, and Mr. Iskanver agreed. Mr. Iskanver stated the sites would have to be leasable and this is not up to him. He stated what he does is indicate where they need a site and the approximate height. He evaluates the sites as they come in. He stated the proposed site does fix the gap in coverage in the area he noted.

Mr. Gruen asked how close they are to satellite cell coverage which would eliminate the cell towers, and Mr. Iskanver stated he does not feel this will take place in the near future and described the delay which would be involved in receiving the signal and those using cell phones depend on instant voice communication.

Exhibit A-6 was marked which is a map of T-Mobile's existing coverage without the proposed site. Mr. Iskanver stated this is a propagation map showing in green areas where there is reliable in-building coverage and yellow which is in vehicle coverage.

Mr. Smith stated he does not understand what is meant by "reliable," and asked if this means 100% of the time, and Mr. Iskanver stated in the green area more than 95% of the time someone in a building would be able to make, maintain, and receive a phone call. Mr. Smith asked if this is time wise or location wise, and Mr. Iskanver stated it is both. Mr. Smith asked how far 85% of the time would extend, and Mr. Iskanver stated he did not have numbers for this. Mr. Smith stated that for the areas that are shown as white people may be able to send and receive phone calls but they do not know the percentage of time, and Mr. Iskanver stated he would estimate that people in the white area are under 50% of the time that they can make and receive phone calls either in vehicles or in buildings and it would decrease if you are in a building. He stated on the border of the yellow and white he would estimate that the percentages would be 50% in buildings and 85% in vehicles. Mr. Smith asked about the percentages on the border of the green and the yellow for a vehicle and Mr. Iskanver stated it would be approximately 95%. He stated the signal decreases as you move away from the site of the tower and it decreases quickly as you move farther away because of the clutter in the way and it is not just linear.

Mr. Smith stated part of the Appeal is asserting that the Ordinance is in violation of the Federal Tele-Communications Act of 1996, and all he is being shown is a map which shows where they have 95% coverage. He stated he would like to see the percent of coverage throughout the entire Township especially if that assertion is being made and the Board needs to know the signal levels at each and every point on the map.

Mr. Goldberg asked why he is looking for every point in Lower Makefield, and Mr. Smith stated he felt T-Mobile was asserting that the Ordinance is in violation of the Federal Tele-Communications Act, and Mr. Goldberg stated if the requested relief were to be denied, they believe it would be in violation of the Federal Tele-Communications Act. Mr. Smith stated he feels they need to know exactly in what way it is in violation. He stated he does not feel the Applicant can make a blanket assertion without data to back it up, and they are asking the Board to make a determination with the threat of a lawsuit that says the Ordinance is in violation of the Tele-Communications Act.

Mr. Goldberg stated more data will be presented, and this is not the end of the testimony.

Mr. Malinowski asked that they hold the questions until the data and testimony is presented. Mr. Smith stated he does not feel they will ever know what the coverage is anywhere in Lower Makefield Township. Mr. Malinowski asked that the Applicant be given an opportunity to present their case.

Mr. Toadvine asked if there is a specific definition of reliable coverage, who makes this determination, and asked if this is a Federal mandate. Mr. Iskanver stated he cannot speak to the law and can only speak to the technical issues. Mr. Iskanver stated technically reliable coverage is the ability to make, maintain, and receive a phone call 95% of the time and anything less is concerned unreliable coverage. Mr. Toadvine asked who sets this standard – T-Mobile or is it some Federal rule or regulation, and Mr. Goldberg stated it is an industry-wide standard used by carriers in addition to T-Mobile.

Mr. Bamburak asked if this map is generated by computer simulation or field surveys, and Mr. Iskanver stated it is by both. Mr. Bamburak noted Site 1BU5277A and stated it falls off very quickly into the yellow but noted at Site 6399A there is a good concentrated area of reliable in-building coverage. He asked why the first site is so spotty, and Mr. Iskanver stated everything that the site has to go through is a factor as to what it can cover. If the signal runs into clutter, the signal decreases. The height of the site is a factor as is the height of the terrain surrounding the site. He stated a site at the top of a hill would provide a lot more coverage. He stated open areas give signals more of a footprint and more condensed areas such as neighborhoods have less of a signal and more restraint on the signal. Mr. Bamburak asked if the simulation takes into consideration topographic maps, and Mr. Iskanver stated it does as well as the tower sites, antennas used, the terrain, the topography, the clutter, and the losses for each point. Mr. Bamburak asked how far apart they did the field survey to verify the simulation, and Mr. Iskanver stated they did a field survey in the middle area of the map and normally teams go out

with antennas mounted on top of their cars and phones inside the cars and they make long calls to check the sustainability of a call, short calls to check blockage and usage of multiple calls, and they also have receivers to check signal levels. This is all tied into receivers and computer equipment along with GPS locations. They take this data and map it out point by point and using that data they can come up with a model for every one of the map sites. They then take the live data and put it into the software program and it will provide the lay out of the propagation. They also verify the data and fine tune it.

Mr. Malinowski suggested they continue the matter to December 16. Mr. Toadvine stated while there are three other items on the Agenda scheduled for that evening, they should not be lengthy. Mr. Goldberg stated he has been advised that one of the witnesses has a conflict on December 16, and he asked that they push it to a January meeting. Mr. Toadvine stated that while they could do this, he felt there were a number of witnesses, and possibly they could have other witnesses testify in December and the individual with the conflict could wait until January. Mr. Goldberg stated that witness is the Zoning Manager for T-Mobile and needs to be at all the Hearings. Mr. Goldberg stated they would agree to waive the time limits on the Board recognizing that the decision to delay is the Applicant's and not the Township's. It was agreed to continue the matter until January 6, 2009.

Mr. Smith asked if they could provide him with percentages so that he can see this. Mr. Iskanver stated what they use are the industry standards; and while he can provide his best estimate of what is outside this, it does not help or hurt their case. Mr. Bamburak asked if there is a signal strength plot they could provide that would give numbers, and Mr. Iskanver stated this is what they have provided. Mr. Bamburak stated he feels Mr. Smith is looking for a topographical map of signal strength. Mr. Smith stated he would like to see something showing signal strength throughout the Township and what it would be with the proposed tower in place. Mr. Iskanver stated what he has shown on the map presented are signal strength thresholds. Mr. Smith stated he would like to see where 85% would begin, etc.

Mr. Bamburak moved, Mr. Smith seconded and it was unanimously carried to continue the matter to January 6, 2009.

OTHER BUSINESS

Appeal #08-1472 – Shady Brook Investors, LP/Capstone – Request for Extension

Mr. Toadvine stated the reason for the request is that they are currently going through the Subdivision process and need to get Final Plan Approval before they can apply for Permits. Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to grant the Extension as requested.

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There being no further business, Mr. Smith moved, Mr. Bamburak seconded and it was unanimously carried to adjourn the meeting at 10:40 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary