

TOWNSHIP OF LOWER MAKEFIELD  
ZONING HEARING BOARD  
MINUTES – FEBRUARY 3, 2009

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on February 3, 2009. Chairman Malinowski called the meeting to order at 7:40 p.m.

Those present:

Zoning Hearing Board:        David Malinowski, Chairman  
   Gregory Smith, Secretary (left meeting in progress)  
   Jerry Gruen, Member  
   Anthony Zamparelli, Member  
   Paul Kim, Alternate Member (joined meeting in progress)

Others:                             Robert Habgood, Code Enforcement Officer  
   (left meeting in progress)  
   David Truelove, Township Solicitor  
   James Majewski, Township Engineer  
   Allen Toadvine, Zoning Hearing Board Solicitor  
   Matt Maloney, Supervisor Liaison

Absent:                             Paul Bamburak, Zoning Hearing Board Vice Chairman

APPEAL #08-1501 – MICHAEL SCOTT AND MAURA BEEDE

Ms. Maura Beede and Mr. Harry Worrell were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application was a one-sheet Plan for Lot #85 Sandy Run Section 2-B time-stamped by Lower Makefield Township 11/24/08, and this was marked as Exhibit A-2.

Ms. Beede stated she is looking for a Variance to expand her kitchen, and she is over the permitted impervious surface. Mr. Malinowski asked the permitted impervious surface, and Ms. Beede stated it is 18%. The existing amount is 20.7%. Mr. Worrell, the builder, stated they want to add a 12' by 24' addition. Mr. Worrell stated he understands that the Township normally asks that something be taken away, but they do not have anything that could be eliminated.

Mr. Toadvine asked Ms. Beede when she purchased the property, and she stated she purchased it in 1991. Mr. Toadvine asked if she has added any impervious coverage since then, and she stated she has not. Mr. Toadvine asked if this will be a one-story addition, and Ms. Beede stated it will.

Mr. Truelove stated the Township does not have a position with regard to this matter.

Mr. Smith noted the 21' by 11' slab in the rear, and Ms. Beede stated this was there when she moved in. It is a concrete patio. Mr. Smith asked how many square feet this would represent, and Mr. Gruen stated it would be 231 square feet. Mr. Smith asked if this were to be removed what would be the amount of the impervious surface, and Mr. Majewski stated removing this rear patio would result in impervious surface of 21.3%. Mr. Smith asked if there is a step down to this, and Ms. Beede stated it is level with the family room. She stated if there was no patio there she would be tracking mud in the house because she has a dog.

Mr. Zamparelli asked if there is any standing water around the house, and Ms. Beede stated last year she had the back yard graded and had 5" of topsoil put down and re-seeded and it is flat.

There was no one present to speak in favor or against this Application. The Public Hearing portion was closed.

Mr. Malinowski stated there are only four members present this evening so that if there were a tie, it would result in a denial. He stated Ms. Beede has the option of waiting until a time when there is a full Board and could request a postponement. Ms. Beede asked if there is an Appeal process if it is turned down, and it was noted it would have to go to Court. Ms. Beede asked for a postponement until February 17.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to postpone to February 17, 2009 at 7:00 p.m.

#### APPEAL #08-1502 – JAM ENTERPRISE

Mr. Joe Marrazzo and Mr. Paul Larsen were sworn in. The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-sheet Plan for Lot #1 Boxwood Farms, dated 11/28/07, and this was marked as Exhibit A-2. Mr. Malinowski reminded the Applicants that there are only four Board members present this evening so that a tie would be a loss. Mr. Marrazzo asked to proceed at this time.

Mr. Marrazzo stated he is building a home for Mr. Larsen in Boxwood Farm on Lot #1. Mr. Larsen has a handicapped son who will be living with him on a full-time basis, and they have put in for a Building Permit for a handicap-access ramp so that Mr. Larsen's son will be able to enter the home on the left side of the house parallel to Oxford Valley Road. He stated there is an 80' setback required on that side of the home, and they are looking to build a 5' access ramp to the deck for him to gain access to the home. They need relief of 5' to be able to construct the ramp. It will not be a covered deck and is not impervious.

Mr. Larsen stated his son has a spinal cord injury and is a quadriplegic. He stated his son is able to operate a power chair and get around on his own. The home is being built with a first-floor suite for his son and an accessible bathroom and kitchen. There is also an elevator on the first floor so that his son can gain access to the basement. He stated the only way his son can access the home is if they construct an incline from the deck along the side of the house and gain access through the kitchen door.

Mr. Truelove stated the Township is taking no position in this matter.

There was no one present to speak in favor or against this Application. The Public Hearing portion was closed.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried that the relief requested be granted in the way of a 5' reduction in the setback.

#### APPEAL #09-1503 – GARY MCCLISTER

David Shafkowitz, attorney, was present with Gary McClister who was sworn in.

The Application submitted was marked as Exhibit A-1. Attached to the Application is a one-sheet Plan dated 10/22/08, with the last revision dated 11/25/08, and this was marked as Exhibit A-2.

Mr. Shafkowitz provided Exhibit A-3 which is an old Building Permit which was issued to Mr. McClister in October, 1990 that addresses the garage that is at issue. Mr. Shafkowitz stated they are looking for a dimensional Variance to allow for an existing garage to encroach into the rear yard setback by approximately 7' over a small portion of the garage which will permit a 3' rear yard setback in that area. He stated Mr. McClister was subject to a fire at his property, and in the process of demolishing the existing site and filing for the Building Permit to rebuild the structure on the same footprint it was brought to their attention by the Zoning Office that there was this Zoning deficiency related to the garage which was built in 1991. Mr. Shafkowitz stated in 1991 the rear yard setback was 10' and there was a portion of the garage based on the vehicles that were housed in the garage that needed extra space and a Building Permit was filed in 1990 for that garage and the Permit originally depicted a conforming building. During the process of construction as Mr. McClister would testify, he had discussions with the Township about extending into the rear yard and was apparently told that there was not a problem doing this. He subsequently constructed the building, and Exhibit A-3 shows on the second page under the inspection records that it was approved on July 3, 1991.

Mr. Shafkowitz stated Mr. McClister would testify that the building as shown on Exhibit A-1 depicted that encroachment into the setback. Mr. Shafkowitz stated while they were getting the Building Permit for the new structure, they wanted to clarify this discrepancy in the record as it relates to this property.

Mr. Shafkowitz stated the garage was built in 1991 and has been there for 20 years. Mr. McClister has discussed this with his neighbors who have lived surrounding the property for a number of years, and they have no objection to the relief being requested.

Mr. McClister indicated that he would agree to the explanation provided to the Board and confirmed that this would be his testimony to the Board.

Mr. Malinowski asked if the garage was affected by the fire, and Mr. McClister stated it was not.

Mr. Smith stated the Plan offered shows a 10' foot setback; and Mr. Shafkowitz stated while this is correct, during the course of construction the Plan was deviated from and that small section of the garage encroached. Mr. McClister discussed this with the Township at that time, and they did not feel any Variance relief was necessary, and they proceeded with the construction. He stated on the second page a final sign-off did come from the Township on 7/3/91 that indicated "Final Building Okay." Mr. Smith stated there is nothing on the second page that states, "alterations okay" or "setback okay," and just says "building okay;" and Mr. Shafkowitz agreed.

Mr. Truelove stated the Township is not taking a position on this matter.

There was no one present to speak in opposition of this Application.

Mr. Tom Fuoco, 500 Stony Hill Road stated he lives behind the garage and has no objection to what is proposed and stated he would like to see Mr. McClister get his home built.

Ms. Kathleen Widman, 510 Stony Hill Road, stated she lives next door and she has no objection to the garage. She stated they have been neighbors for close to thirty years.

The Public Hearing portion was closed.

Mr. Zamparelli moved, Mr. Smith seconded and it was unanimously carried that the approve garage as built can extend 7' into the setback.

OTHER BUSINESS

Appeal #06-1410(A) Norman P/Patricia O'Rourke Extension

Mr. Toadvine stated this is a request for an Extension for a Variance previously granted by the Board. The Applicants' attorney, Mr. Murphy, sent a letter requesting an extension until 9/1/08. He stated they are still going through the Application process to get the Minor Subdivision approved.

Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to grant an extension to 9/1/09.

A short recess was taken at this time. The meeting was reconvened at 8:25 p.m.

APPEAL #08-1481(A) – THE FRANKFORD HOSPITAL OF CITY OF PHILADELPHIA, INC.

Mr. Smith left the meeting at this time, and was replaced by Mr. Paul Kim.

Mr. John VanLuvanee, attorney for the Applicant, Mr. John Koopman, attorney on behalf of Newtown Township, and Mr. Ronald Smolow, attorney for Residents Against Frankford Relocation were present.

Mr. Malinowski stated the Board is in receipt of seventy-four letters in opposition to the Application. He stated the Board is also in receipt of a Resolution from Palmer Farm Village Community Association in opposition to the Application. Mr. Truelove stated there was one other Homeowners' Association representative who indicated to him that she had a Resolution. He stated Linda Finkle is the President of the Shady Brook Homeowners' Association and she had indicated that she also had a Resolution. Ms. Finkle stated at the last Hearing she was granted Party status individually because she did not have a Board Resolution, and this is what she is presenting this evening.

Mr. VanLuvanee stated Section 9088 of the MPC precludes the Board from taking notice of any communications less the Parties are afforded the opportunity to contest the material and that process has not occurred. Mr. VanLuvanee stated he would like to have copies of these items. Mr. Toadvine stated this is the first time the Board has seen them. He added the Resolution from Shady Brook Farm is just a Resolution authorizing Ms. Finkle to represent the Association. He stated the Palmer Farm Resolution has to do with the merits of the case, and Mr. VanLuvanee stated this would be within the scope of the prohibition on taking notice of those communications under Section 9088 of the MPC.

Mr. Truelove stated he did not know about either of these Resolutions until this evening, and he requested that he be provided copies although he does not object to them.

Mr. VanLuvanee was provided a copy of the Palmer Farm Village communication and he stated this petition has what purports to be statements of either fact or opinion that clearly would be subject to cross-examination; and for that reason, he objects to the Board's receipt or review of this. He stated it was not submitted by a Party.

Mr. Truelove stated Section 9086 does indicate that the formal rules of evidence shall not apply; and while he understands Mr. VanLuvanee's objection, he would request that it be admitted subject to Mr. VanLuvanee's ability to call witnesses or cross-examine those who purport to be the authors of the document.

Mr. VanLuvanee stated they are not a Party to this proceeding; and added what Section 9086 does not say is that since the formal rules of evidence do not apply, Section 9088 does not have any meaning. He stated 9088 is specific.

Mr. Malinowski sustained Mr. VanLuvanee's objection.

Mr. Truelove asked if it would be possible to have Palmer Farm or the other representatives to have the opportunity at some later time at a Hearing to offer themselves as Parties for the purpose of entering this to satisfy Section 9088.

Mr. VanLuvanee stated Palmer Farm represents that it is a community approximately 7/10ths of a mile away from this site; and based on that the Community Association and its members would not be persons who would have standing as priorities potentially aggrieved by a Decision on this property, and for that reason he would object to having them made a Party at a later date. He stated they could have been present previously.

Mr. Malinowski stated the Party status has already been established, and the Chair will not allow Palmer Farm to become a Party. Mr. Toadvine stated that the Chair has ruled that after five meetings, there will not be any consideration for new Associations to become Parties to this Application. Mr. Truelove stated if it is after five Hearings, tonight would be the fifth meeting. Mr. Malinowski stated Party Status has already been established during earlier meetings and there have been ample opportunities to request Party status.

Mr. Toadvine stated there were subpoenas issued by the Board and two of the subpoenas have been formally objected to. Mr. VanLuvanee stated he filed objections on behalf of Frankford Hospital, and Bohler engineer is represented by his firm, and one of his partners has filed objections on their behalf. He stated the objections were just to one of the four to five paragraphs of the subpoena which was the one that requested all

communications of any kind or nature whatsoever having anything to do with the Hospital project. He stated the objections in both cases were based on the fact that the requested information was overly broad. He stated he previously indicated that he would be willing to discuss this with Mr. Smolow to see whether or not they could reach an agreement on the scope of what is or is not relevant; but beyond that it is his view that the Zoning Haring Board does not have enforcement powers and ultimately it would be necessary for a Court action to be filed to determine whether or not the scope of what is requested in the subpoenas is appropriate. He stated they will make a good faith effort to resolve this.

Mr. Smolow stated he spoke to Mr. VanLuvanee before the Hearing this evening regarding the subpoenas, and they have set aside a time for later this week to try to resolve his objection; and if they cannot, they will either come back to the Board or go to Court to enforce the subpoena.

Mr. Truelove stated he has a few more questions this evening for Mr. Majewski who was reminded that he was still under oath. Mr. Truelove asked if Mr. Majewski, at his request, did a review of approved developments within a three mile radius of the proposed development site; and Mr. Majewski stated he did. He has prepared an Exhibit through power point and has a hard copy as a result of this request. Mr. Majewski stated several of the developments he had information on from Lower Makefield Township, and he put in a request to Newtown Township for a list of the developments that are under construction or have been approved in the last year in Newtown Township, and they supplied him with this information. Based on that, he prepared the Exhibit to present this evening. Paper copies of the power point were provided and marked as Exhibit T-4.

Mr. VanLuvanee objected to the use of this Exhibit. He stated a good part of this Exhibit is based on hearsay information from another source in another Township who is not present to testify. He also questioned the relevance of this line of questioning.

Mr. Truelove stated this is a foundational issue because it will be shown later that McMahon Engineering as part of its analysis of the ICT Building used the same type of review of surrounding developments for traffic impact at that location; so therefore, the Township believes it is relevant to this proceeding because of the location and the issues raised by the review of the other developments. As to the hearsay objections, Mr. Truelove stated he has already cited MPC Section 9086; and if there is any question about the veracity of the information, subsequent Hearings can determine whether the information upon which Mr. Majewski relies is accurate. He asked that the Board hold in abeyance any ruling on the Objections.

Mr. VanLuvanee stated if this is to be a foundation for someone else's testimony, he feels Mr. Majewski is the wrong person to introduce it and the person who feels it is relevant to their testimony should be introducing the information so that he can cross-examine him about the reason for its relevance.

Mr. Truelove stated he would cite the same Section of the MPC. He also noted Mr. Majewski has testified that he is the Township engineer and he obviously reviews developments. He stated Newtown Township is a neighboring Township, and the impact and information upon which he would rely is something he does on a regular basis as has been testified to already.

Mr. Malinowski stated he would allow Mr. Majewski to testify with regard to developments in Lower Makefield but feels anything in Newtown is beyond his scope at this time.

Mr. Smolow stated he would object to the ruling as he is the Township engineer, and he has the ability to survey the record of the adjoining community to determine what developments are or are not approved.

Mr. Koopman stated Newtown Township would also like to take exception based on the comments made by Mr. Smolow and Mr. Truelove.

Mr. Majewski stated he did get the list of Commercial and non-Residential projects in writing from Newtown Township.

Mr. Toadvine advised Mr. Majewski that the Chair has ruled that he can testify as to developments in Lower Makefield Township.

Mr. Truelove asked that Mr. Majewski confine himself to those developments in Lower Makefield Township, and describe those developments, their locations, and the number of approved residences. Mr. Majewski stated there are several developments located in Lower Makefield Township that were not considered as part of the traffic report. He noted the office complex – Capstone Terrace. He stated the Applicant's engineer, in their analysis indicated the project had 60,000 square feet of office space; and in fact it has 180,000 square feet of office space. This is located on Stony Hill Road approximately ¼ mile away from the project site. He also noted a development approximately ½ mile away which is the four story office building in the Floral Vale Development which is currently under construction. He stated this project has 87,000 square feet of office space. He also noted a project that will be coming into the Township shortly – Edgewood Square - which will have 56,765 square feet of office space, 38,873 square feet of retail, and 58 residential units. He also noted a project approximately one mile away on Lindenhurst Road at the intersection of Lindenhurst and Woodside Roads. He stated this was approved several years ago and has just started construction. This is the

Minehart Subdivision and is shown as #3 on the Exhibit. He stated Capstone is shown as C, Floral Vale D, and Edgewood Square E2.

Mr. Majewski also noted Brookshire Estates which is located behind the Dolington Estates Development off of Route 532 shown as #4 on the Exhibit. This project combined with the Troilo Subdivision which they are marketing as one entity has 34 residential units. He stated the other development is the Octagon Center approved two years ago at the intersection of Oxford Valley Road and Big Oak Road which has 525 residential units.

Mr. Truelove asked if Mr. Majewski was present for the testimony of Mr. O'Brien, the traffic engineer from McMahon on behalf of the Applicant; and Mr. Majewski stated he was. Mr. Murphy asked if Mr. O'Brien took into account any of these developments as part of his opinion, and Mr. Majewski stated he only took into account 60,000 square feet of the 180,000 square feet for the Capstone Terrace project. Mr. Truelove asked how far away is the farthest project from the proposed development, and Mr. Majewski stated the Octagon Center is approximately 2 miles from the site, and Brookshire Estates is about 2 miles from the site.

Mr. Kim asked Mr. Majewski what is "proposed" versus "approved," on the Exhibit, and Mr. Majewski stated all projects he has noted have been approved by the Township with the exception of Octagon Center. Currently Brookshire Estates, Minehart Subdivision, and Floral Vale are under construction.

Mr. Gruen asked Mr. Majewski if he is aware of any additional projects located near the By-Pass that will be affecting traffic at the intersection, and Mr. Majewski stated there are a number of developments that are in Newtown Township that are currently under construction that were approved in 2007 and 2008. Mr. Gruen asked if he has on his list any of those which have been approved.

Mr. VanLuvanee objected, and Mr. Malinowski sustained adding they cannot go into Newtown. Mr. Gruen stated they did go into Newtown as when the Applicant's traffic engineer, Mr. O'Brien, presented evidence, the Board asked about Newtown; and Mr. O'Brien indicated he did not research it and did not know. Mr. Gruen stated he feels traffic is a large portion of this approval process, and he would like to know what additional traffic will go on the By-Pass. Mr. Malinowski stated he has already ruled that Mr. Majewski cannot testify to anything with regard to Newtown because he is not an expert in Newtown. He noted Mr. Majewski is also not a traffic engineer so he really cannot testify as to traffic either. Mr. Gruen stated he has not asked him about traffic and is asking about any approvals. He stated if something is approved, it is a matter of record, and it is not hearsay.

Mr. Kim stated the objection was overruled because the person who is the expert in Newtown Township is not present for cross-examination. He stated he does not feel it would be a problem if the Newtown Township representative would come to testify and would then be available for cross examination.

Mr. Gruen asked what kind of expertise is needed to know if a project was approved since this is a matter of record. Mr. Gruen stated traffic is flowing from outside the Township into Lower Makefield.

Mr. VanLuvanee asked about Exhibit T-4 and asked if the objection was sustained so that the record will just include Mr. Majewski's testimony. He stated otherwise all the information is in the record if T-4 is in the record. Mr. Truelove stated he has not moved for the admission of T-4 and was going to hold this in abeyance until he has another witness that can verify the balance of the information. It was noted at this point the Exhibit has only been marked.

Mr. VanLuvanee stated Mr. Majewski testified that Capstone will be 180,000 square feet if constructed and built out and asked if any part of it is currently under construction. Mr. Majewski stated it is not currently under construction. Mr. VanLuvanee asked if the project has Final approval, and Mr. Majewski stated it has Preliminary approval and they have submitted for Final approval. Mr. VanLuvanee stated Mr. Majewski testified that Floral Vale is currently under construction, and Mr. Majewski agreed. Mr. VanLuvanee asked if Edgewood Square has Preliminary approval, and Mr. Majewski stated they have no approvals. Mr. VanLuvanee stated Mr. Majewski testified that 34 units at Brookshire Estates are under construction, and Mr. Majewski agreed. Mr. VanLuvanee asked if this is a phased project, and Mr. Majewski stated it is a phased project. He stated Brookshire Estates Phase I is currently under construction and has 21 units. The Troilo Subdivision which adjoins it and is being marketed by Orleans as Brookshire Estates has 5 lots and this is under construction. The second phase of Brookshire Estates has 9 lots and is not currently under construction.

Mr. Majewski asked about the approval status for the Matrix project, and Mr. Majewski stated they have Final approval, and the Mylars have been recorded. This is for the entire project with the exception of a small office and retail portion. Mr. VanLuvanee asked if financial security has been posted for the improvements, but Mr. Majewski was not sure. Mr. VanLuvanee asked if a Development Agreement has been entered into for one or more phases, and Mr. Majewski stated he did not believe so. Mr. VanLuvanee stated Mr. Majewski indicated this project was approved approximately two years ago, and Mr. Majewski agreed.

Mr. VanLuvanee stated Mr. Majewski testified on December 2 that he had been recognized before various Boards, Commission, and Courts in Pennsylvania and New Jersey as an expert and asked before what Courts in Pennsylvania he has been recognized as an expert and in what field. Mr. Majewski stated he has not been recognized as an expert by a Court in Pennsylvania. Mr. VanLuvanee asked what other Boards he has been qualified as an expert in Pennsylvania other than the Lower Makefield Township Zoning Hearing Board; and Mr. Majewski stated he represented Upper Makefield Township, Solebury Township, Wrightstown Township, and Newtown Borough. He has also appeared before Boards in Lower Southampton, Langhorne Manor Borough, Hulmeville Borough, and Doylestown Township. Mr. VanLuvanee asked Mr. Majewski if the firm he was associated with at the time, the Municipal engineer for all of the Municipalities he listed, and Mr. Majewski stated this was correct with the exception of Lower Southampton. Mr. VanLuvanee asked about the Lower Southampton testimony he provided, and Mr. Majewski stated this was for a project that the Township was undertaking to install a dam, and he appeared before the Board of Supervisors to explain the project. His firm had been retained by that Township to do that project.

Mr. VanLuvanee stated at the last meeting, he asked Mr. Majewski a question which was objected to by Mr. Truelove who indicated the question was premature. Mr. VanLuvanee stated it was his understanding that the Township Board of Supervisors at a public meeting early in 2008 took a vote to direct the Township solicitor to appear at the Zoning Hearing Board Hearing in opposition to this Application, and he asked Mr. Majewski if he was present at that meeting; and Mr. Majewski stated he was. Mr. VanLuvanee stated when Mr. Majewski reviewed the Plans and submissions made by Frankford Hospital or its consultants in this matter at Mr. Truelove's request, he was aware that the purpose of his testimony was to testify in opposition to the Application, and Mr. Majewski agreed.

Mr. VanLuvanee stated the first critique Mr. Majewski had of the Frankford Plans and Applications dealt with the fact that Frankford's consultants had chosen not to count manmade steep slopes as a natural resource requiring protection, and Mr. Majewski agreed. Mr. VanLuvanee asked if Mr. Majewski would agree that the steep slopes or the bulk of the areas that he classified as steep slopes were in fact manmade, and Mr. Majewski stated it appears that they were. Mr. VanLuvanee stated this is based on his observations as he has driven by the site many times, and Mr. Majewski agreed. Mr. VanLuvanee stated what appear to be slopes that would qualify as steep under the Ordinance appear to be terraces in the farm field visible from 332, and Mr. Majewski agreed. Mr. VanLuvanee stated Mr. Majewski also indicated that he looked at some old aerial maps and it appeared as if those terraces had been there since approximately 1938, and Mr. Majewski agreed. Mr. VanLuvanee stated the fact that they have been there a long time does not make them natural, and Mr. Majewski stated this would depend on how you would define natural and added they have been there for seventy years. Mr. VanLuvanee stated Mr. Majewski also testified during his dialogue with Mr. Kim at

the end of the Hearing, that if the farmer had decided to re-grade those for some purpose, this would be an activity not regulated by the Township, and Mr. Majewski stated he agreed this is what he indicated.

Mr. VanLuvanee asked if the slope were a natural slope that existed on a farm, would the farmer have the right to re-grade it, and Mr. Majewski stated while he is not the Zoning Officer, he feels that if it was a natural slope and the farmer needed to alter it slightly to farm it, he does not feel the Township would have an objection. Mr. VanLuvanee asked if his testimony is that the farmer would not have to come to the Zoning Hearing Board.

Mr. Truelove objected noting that the Zoning District is O/R so he feels the questions are irrelevant in terms of comparing that to what would be required under the applicable Ordinances.

Mr. VanLuvanee asked Mr. Majewski if the Natural Resource Protection Standards apply in all Zoning Districts, and Mr. Majewski stated they do. Mr. VanLuvanee asked if it would matter whether it was O/R or any other District, and Mr. Majewski stated it would not matter.

Mr. Malinowski agreed to allow the question.

Mr. VanLuvanee stated Section 200-51 (the Natural Resource Protection requirements Section) states that the regulations apply to all Zoning Districts and all uses, and Mr. Majewski agreed. Mr. VanLuvanee asked Mr. Majewski if he would agree that agriculture is a Use under the Lower Makefield Township Ordinance, and Mr. Majewski agreed. He stated he feels this means that they would probably need a Variance if they wanted to alter the slopes whether they are natural, manmade. Mr. VanLuvanee stated that would assume that the Zoning Hearing Board would agree with his testimony that manmade slopes are a natural resource regulated as steep slopes under Section 200-51, and Mr. Majewski agreed.

Mr. Smolow objected and stated he feels this would depend on whether the Zoning Officer agrees with his interpretation and not the Zoning Hearing Board.

Mr. VanLuvanee stated the Zoning Hearing Board is called upon to interpret the Zoning Ordinance.

Mr. VanLuvanee asked if it would depend on whether the Zoning Officers determined that manmade steep slopes were regulated under 200-51, and Mr. Majewski agreed. Mr. VanLuvanee stated Mr. Majewski offered his opinion that they were regulated under 200-51, but today he is deferring to the Zoning Officer; and Mr. Majewski stated he still feels his interpretation is correct based on the previous discussions on manmade versus

natural steep slopes that occurred when the Ordinance revised, however, the Zoning Officer is the one that ultimately make those Zoning determinations.

Mr. VanLuvanee stated Mr. Majewski had testified that when the Zoning Ordinance was re-written in 2006 for Low Impact Development, there was a specific discussion regarding whether or not manmade slopes should be applicable, and he recalls that Mr. Majewski testified that at that time it was determined that manmade slopes would be regulated under the Ordinance, and Mr. Majewski agreed. Mr. VanLuvanee asked Mr. Majewski if he would agree that it is the actual language of the Ordinance that is relevant to a determination as to whether or not, even if that was the objective, the objective was achieved by the language, and it is the Ordinance that ultimately makes that determination and not the intent. Mr. Majewski stated he feels this is a legal question.

Mr. Koopman objected and stated he has been asking Mr. Majewski legal questions for the last fifteen minutes.

Mr. Malinowski sustained the objection.

Mr. VanLuvanee stated previously Mr. Truelove and Mr. Majewski noted Section 200-51B5 of the Zoning Ordinance during the discussion concerning steep slopes, and Mr. Majewski agreed that this is one of the Sections that regulates steep slopes. Mr. VanLuvanee asked Mr. Majewski if he would agree that the only place in Section 200-51B5 which talks about or uses the term “manmade slopes” is Section F, and Mr. Majewski agreed. Mr. VanLuvanee stated he has reviewed Section F since the last Hearing and asked Mr. Majewski to review it as well and advise if he feels there is a typographical error in the Ordinance where they delineated it as Subsection F rather than eliminating that Section where it says “Steep Slope Protection” and having five criteria underneath that are in fact standards and guidelines that the Board is supposed to consider in granting a Conditional Use where an Applicant asks for relief from the steep slope provisions.

Mr. Truelove objected as he feels this is a legal question.

Mr. VanLuvanee noted Section D2 but added it may be E2. He stated there is a Section called “Standards for the Grant of Conditional Use Approval,” and Mr. Majewski agreed there is such a Section. Mr. VanLuvanee stated that it appears to be E2, and Mr. Majewski agreed. Mr. VanLuvanee stated at the end of that paragraph (E2) the last sentence reads, “In determining whether and to what extent to grant Conditional Use relief, the Board shall consider the following standards and guidelines.” Mr. VanLuvanee stated if the formatting is correct, there are no “standards and guidelines,” and Mr. Majewski agreed that there appears to be a formatting error. Mr. VanLuvanee asked if Mr. Majewski helped write the Ordinance, and Mr. Majewski

stated he did. Mr. VanLuvanee asked if the paragraphs 1, 2, 3, 4, and 5 are supposed to be the standards and guidelines to be applied by the Board in determining whether or not to grant Conditional Use Approval to allow encroachment into steep slopes.

Mr. Truelove objected stating this is an Ordinance interpretation.

Mr. VanLuvanee stated Mr. Majewski testified that he helped write the Ordinance.

Mr. Malinowski overruled the objection.

Mr. VanLuvanee again asked if those were not the criteria to be applied, and Mr. Majewski stated he believes so.

Mr. Truelove objected.

Mr. Toadvine stated Mr. Majewski has already answered the question.

Mr. Truelove stated he would move to strike because earlier Mr. Majewski was not allowed to talk about other issues leading to the drafting of the Ordinance and now he is being asked to make interpretations based upon information ...

Mr. Toadvine the Chair has already made a ruling.

Mr. Truelove stated he would take exception to that.

Mr. Toadvine asked that they keep the testimony moving.

Mr. Truelove offered an objection to this as well adding that every time he objects he is put in place because he is trying to make a record. He stated whether the testimony is moving or not he has the right to make a record.

Mr. Toadvine stated the objection was noted, and the Chair has made a ruling; and every time the Chairman makes a ruling there is an argument. He stated once the Chair has made the rule, it is ruled.

Mr. Truelove stated he made a subsequent objection based upon a different criteria.

Mr. Truelove stated if he has different objections, he has the right and an obligation to make those objections. Mr. Toadvine stated he should make them altogether.

Mr. Truelove stated there are not always apparent at the time the questions are asked, or the rulings are sometimes not made at the time he is making his objections.

Mr. Toadvine stated the Chairman has made a ruling, and they should honor his position.

Mr. VanLuvanee stated in his direct testimony Mr. Majewski discussed the Zoning Ordinance criteria for a helistop. He stated Mr. Majewski's comment was that the Ordinance requires a helistop to be 100' by 100' for the landing area. Mr. VanLuvanee asked Mr. Majewski in his review of the Plan did he see any reason why, if in the future Frankford proposed a helistop, there would not be sufficient room to put a 100' by 100' pad on the site, and Mr. Majewski stated there would be room.

Mr. VanLuvanee stated Mr. Majewski also commented in direct testimony about the lack of loading berths for the office buildings and the location of the loading berths for the Hospital use, and Mr. Majewski agreed. Mr. VanLuvanee asked if his testimony is correct, he would expect the Applicant to be able to revise the Plan to show the required number of loading berths as described on a site of this size.

Mr. Smolow objected as this is speculative and stated they are dealing with this Plan and not future Plans.

Mr. VanLuvanee stated while this is the Plan before them now, Mr. Majewski has also offered a number of opinions and they know that this is not the last step in the land use process; and if there is a type of defect that Mr. Majewski notes that he does not feel can be corrected, this would be relevant. Mr. VanLuvanee stated he feels these things that are easily correctable are not in fact the type of defects that are fatal to an Application for a use. He stated this is a legal argument, and is not the question he asked Mr. Majewski.

Mr. Malinowski stated the Board does understand this.

Mr. VanLuvanee stated at the end of the line of questioning of Mr. Majewski by Mr. Truelove concerning the loading berths there was a statement made (Page 101 – Line 6 of the Transcript) "There is also insufficient room to maneuver any of these loading berths due to presence of concrete curbing for islands and also there is parking spaces and driveway aisles within the area that would be needed to pull into and out of these spaces." Mr. Truelove had asked the question, "So they do not comply?" and Mr. Majewski stated, "correct." at which point Mr. VanLuvanee had objected, and the Objection was overruled.

Mr. VanLuvanee asked what they did not comply with. Mr. Majewski stated the Zoning Ordinance requires that a loading berth be 12' in width by 40' in length, and 14' in height exclusive of drives and maneuvering space; and based on the presence of the existing driveways, the concrete curb, and the other spaces, he does not believe that they comply. Mr. VanLuvanee stated it appears Mr. Majewski does not feel that the sizing is there in an area that is free of driveway aisles, curbs, etc., and Mr. Majewski agreed.

Mr. VanLuvanee noted page 102 of the Transcript where Mr. Truelove and Mr. Majewski had a dialogue as to Mr. Majewski's review of the Plans in comparison with different Sections of the Subdivision and Land Development Ordinance, and Mr. Majewski had testified, "I looked at different Sections of the Ordinance that I felt were applicable to satisfy requirements for a Special Exception." Mr. VanLuvanee asked Mr. Majewski what he meant by that. Mr. Majewski stated under the criteria for a Special Exception – Section 200-98A3A states that "the proposed use is in accordance with the spirit, purpose, and intent of the Comprehensive Plan and in conformance with all applicable requirements of this Chapter and Chapter 178 Subdivision and Land Development.

Mr. VanLuvanee stated when Mr. Majewski stated he looked at the Sections which he felt were applicable, how did he make a determination as to what was an applicable Section of the Subdivision and Land Development Ordinance. Mr. Majewski stated he determined in his own mind what Sections that he put out there for review that the Zoning Hearing Board would need to have in front of them to adequately review whether this proposed use would meet the criteria such as information about the buildings, what type of buildings are proposed, what are the layouts going to be, what is going to be in the buildings, what are the existing features in and around the property such as sidewalks, bikepaths, stuff that would impact on the circulation of the site since one of the criteria of the Special Exception that "the adequacy of the site area and arrangement of buildings, driveways, parking areas," so he picked out Sections of the Subdivision and Land Development Ordinance that he felt were not shown on the Plans that would show whether or not they meet that criteria.

Mr. VanLuvanee asked Mr. Majewski would agree that Section 200-98B also directly states that the Zoning Hearing Board may impose Conditions regarding lay-out, circulation, and performance that it deems are necessary, and Mr. Majewski agreed.

Mr. VanLuvanee asked if there are any Sections or Chapters of the Subdivision Ordinance that he did not review in connection with this Application; and Mr. Majewski stated he did not show in his review letter or testify to things such as profiles, storm sewer lines, sanitary sewer lines, water lines, and information that is purely design driven and not lay-out driven and those Sections of the Subdivision and Land Development Ordinance he has not cited.

Mr. VanLuvanee asked Mr. Majewski if he would agree that the Township Zoning Ordinance does not state than an Applicant for a Special Exception for a Use which would later require Land Development Approval must submit Preliminary Subdivision and Land Development Plans with the Special Exception Application, and Mr. Majewski agreed that the Ordinance does not state this.

Mr. VanLuvanee asked if there is any Section in SALDO that specifically states that this Section applies or should be complied with by an Application for Conditional Use Approval, and Mr. Majewski stated he feels this is a Special Exception. Mr. VanLuvanee asked if there is any provision in the SALDO that an Applicant for Special Exception shall submit this information, and Mr. Majewski stated there is not. Mr. VanLuvanee stated Section 200-98A3 does not refer to specific Sections of SALDO and say that an Applicant shall be required to submit the information set forth in a certain Section or Chapter of SALDO, and Mr. Majewski agreed that it does not.

Mr. VanLuvanee stated a number of points Mr. Majewski raised concerning compliance with SALDO made reference to a requirement of Section 178-20 of SALDO, and Mr. Majewski agreed. Mr. VanLuvanee asked if Mr. Majewski would agree that Section 178-20 of SALDO sets forth the information and standards that are required to accompany Preliminary Plans, and Mr. Majewski agreed.

Mr. VanLuvanee stated Mr. Zappalla testified that in preparing the Plans from which he testified during his testimony that he had reviewed and had attempted to provide the information on that Plan that was required by a Sketch Plan which is part of Article 5 of SALDO and Section 178.17 tells what information is required for Sketch Plan, and Mr. Majewski stated it does; but it does not mention the Special Exception in that Section of the Ordinance. Mr. VanLuvanee agreed, and asked if it mentions it in Section 178-20, and Mr. Majewski agreed it does not. Mr. VanLuvanee stated Mr. Majewski has already testified that the Zoning Ordinance does not state that the Applicant has to file Preliminary Subdivision and Land Development Plans with the Application, and Mr. Majewski agreed that it does not state this in the Ordinance.

Mr. VanLuvanee stated Mr. Majewski criticized the Plan because SALDO Section 178.20C9 requires that certain existing features be shown on the Plan and asked if this means a Preliminary Plan, and Mr. Majewski agreed. Mr. VanLuvanee stated there is no similar requirement under Section 178.17 for a Sketch Plan, and Mr. Majewski stated not specific to the comment he made for Section 178.20C9.

Mr. VanLuvanee asked if Mr. Majewski is familiar with Section 178.14 of SALDO which is the statement of purpose for a Sketch Plan, and Mr. Majewski stated he is. Mr. VanLuvanee stated Mr. Majewski has been the Township's engineer for approximately six years and has reviewed Sketch Plan Applications, and Mr. Majewski agreed. Mr. VanLuvanee stated he assumes that the Township likes to see Sketch Plans when an Applicant comes in with a project that will be a Land Development or Subdivision, and Mr. Majewski agreed. Mr. VanLuvanee stated one of the reasons to submit Sketch Plans is so that the Applicant has an opportunity to have discussion about the project before committing funds for engineering drawings and reviews that are required for Preliminary Plans, and Mr. Majewski agreed.

Mr. VanLuvanee stated they are before the Zoning Hearing Board on a Special Exception Application, and the Board is determining whether or not the use is going to be permitted for the property, and Mr. Majewski agreed.

Mr. VanLuvanee stated Mr. Majewski testified that Section 178-20E20 requires that a Plan show proposed public improvements including bikepaths, streets, curbs, gutters, sidewalks, typical cross-section of proposed street and utility plan, and asked Mr. Majewski if this is not a Preliminary Plan requirement; and Mr. Majewski agreed. Mr. VanLuvanee stated this requirement does not appear as a requirement for a Sketch Plan submission, and Mr. Majewski stated it does not.

Mr. VanLuvanee stated in his answer that dealt with that Section, Mr. Majewski made a comment that the additional through lane on Route 332 that has been testified to has not been shown between Stony Hill Road and I-95 (Page 105, Lines 20 through 22 of the Transcript). Mr. VanLuvanee stated the area he is describing is actually off site and does not touch the property that is the subject of the Application, and Mr. Majewski agreed but noted that it was testified to by the Applicant's engineers that this was to be proposed. Mr. VanLuvanee stated this is a traffic related question; and Mr. Majewski stated he does not feel it is just traffic and it is general Site Plan lay-out, and if you are proposing a lane, it should be shown on the Plan. Mr. VanLuvanee stated for off-site improvements it would be required to have a PennDOT Permit, and Mr. Majewski agreed.

Mr. VanLuvanee noted on Page 106, Line 3 of the Transcript Mr. Majewski criticized the Plans because they did not show the required bikepath. Mr. VanLuvanee stated Section 178.17 for a Sketch Plan does not state that the Plan has to show a bikepath, and Mr. Majewski stated under 178.17H it states "existing and proposed street lay-out" and since a bikepath is usually next to a street this is considered part of the overall right-of-way or street roadway improvements. Mr. VanLuvanee stated Route 332 already exists, and Mr. Majewski agreed. Mr. VanLuvanee stated the Ordinance clearly states that any Land Development or Subdivision is supposed to have bikepaths that are consistent with the Township's Master Plan, and Mr. Majewski agreed. Mr. Majewski stated they recognize this is a requirement, but asked what that has to do with a hospital. Mr. Majewski stated this would need to be shown to see how it would impact on the internal circulation, driveways, and entrances and exits to the Hospital and how these would affect the bikepath. Mr. VanLuvanee stated as far as the Zoning Hearing Board's function of evaluating the appropriateness of the site for a hospital, the bikepath does not have anything to do with the appropriateness of the site for a hospital, and Mr. Majewski stated he feels this would be up to the Zoning Hearing Board to determine.

Mr. VanLuvanee stated Mr. Truelove noted Section 178.20E25 and Mr. Majewski criticized the Plans for what he described as the lack of some of the elements that that Section of the Ordinance would require, and Mr. Majewski agreed. Mr. VanLuvanee stated that Section of the Ordinance deals with Preliminary Plan requirements, and Mr. Majewski agreed.

Mr. VanLuvanee noted Page 107, Line 13 of the Transcript where Mr. Majewski suggested that you don't know from the Plans what is going to be within the Hospital, and the reason why you would want to evaluate that is to evaluate whether the parking they have provided on site would comply with the Ordinance. Mr. VanLuvanee stated he reviewed the Zoning Ordinance and noted Section 200-79 which spells out parking requirements for the different land uses that are permitted in the Ordinance. He stated 200-79A20 has the parking standard for Hospital. He stated the Ordinance also defines the term, "Hospital" in Section 200-68A18, and Mr. Majewski agreed. Mr. VanLuvanee asked if Mr. Majewski was present when Mr. Powell testified and when Mr. VanLuvanee read that definition to him and asked him if what Frankford proposed for the site met that definition, and he indicated it did; and Mr. Majewski stated he does remember that testimony. Mr. VanLuvanee asked if the use is a hospital, what difference under the Zoning Ordinance would it make with reference to parking requirements what specific Departments were inside the building that qualifies as a hospital. Mr. Majewski stated his concern was that there would be office space inside the Hospital, and that could impact the parking count. Mr. VanLuvanee asked if Mr. Majewski was ever in a hospital, and Mr. Majewski stated he was. Mr. VanLuvanee asked if he has not seen offices in hospitals before, and Mr. Majewski stated he has.

Mr. VanLuvanee noted Page 107, Line 24 of the Transcript dealing with parking spaces where Mr. Truelove stated "so the number provided may or may not be accurate depending on the intended uses within the building," and Mr. Majewski answered "correct." Mr. VanLuvanee stated Mr. Majewski agreed with Mr. Truelove's characterization, and he is now asking him to tell how he would modify what was shown on the Plan for the Hospital. He asked what he would require an Applicant to submit to him so that he could make his determination of the required number of parking spaces. Mr. Majewski stated part of the SALDO requirements are that they submit Preliminary Plans of what the Hospital will contain. He stated if they have gone through the trouble of developing the Plan showing the configurations of the building the way they have, his assumption would be that they have some kind of preliminary floor lay-out of how they would lay out the Hospital, and he would like to have seen this to verify that the parking count will be okay. Mr. VanLuvanee asked what he would do with the floor plan if he had it and what would he do differently other than just applying the parking ratio for the Hospital use. Mr. Majewski stated he would use it to confirm that the several wings that are on the Hospital are not purely medical offices as opposed to a Hospital use. Mr. VanLuvanee asked if he is talking about the office buildings or the Hospital and Mr. Majewski stated he is talking about the Hospital itself.

Mr. VanLuvanee asked if he would want this same information for the medical office buildings, and Mr. Majewski stated he would not because the medical office buildings are purely for offices. Mr. VanLuvanee stated the testimony was that there may be out-patient services provided in the office buildings, and he asked if this would change his opinion and would he need to see if part of it may qualify as a Hospital with a different parking standard or is it the principal use of the building and whether it meets the definition which is relevant. Mr. Majewski stated he did not have an opinion on this tonight.

Mr. VanLuvanee stated Mr. Majewski discussed the subject of stormwater and compliance with the LID Ordinance of the Township. Mr. VanLuvanee stated Ordinance 363 was passed in 2006 which amended the Subdivision Ordinance and Ordinance 363 was passed in 2006 which amended the Zoning Ordinance, both of which were low impact development amendments to the respective Ordinances, and Mr. Majewski agreed. Mr. VanLuvanee asked Mr. Majewski if he would agree that no part of Section 200-98A3 requires that the Applicant submit a Stormwater Management Plan with an Application for Special Exception, and Mr. Majewski agreed.

Mr. VanLuvanee stated Mr. Majewski testified that Section 178-93A of the SALDO requires compliance with the LID Ordinance of the Township, which he assumes would be a reference back to the amendments that were enacted by Ordinance 363, and Mr. Majewski agreed.

Mr. VanLuvanee asked Mr. Majewski whether he was suggesting to the Zoning Hearing Board that they had to determine whether the design of the proposed Hospital and medical office building facility as shown on the plan submitted do or do not meet the LID Stormwater Management Ordinances of the Township as a part of their Special Exception review. Mr. Majewski stated what he was trying to indicate with that Section of the Ordinance was that in order to locate the building on the site, show the circulation throughout the property, where the parking is, and where the loading berths are you would need to start with where the stormwater management was going to occur; and he does not believe the Plan complies with the Stormwater Management Ordinance as far as the lay out of the buildings and the parking and would require substantial and significant changes to the lay out and traffic circulation pattern inside the project in order to comply with LID.

Mr. VanLuvanee stated Mr. Majewski advised the Zoning Hearing Board that he felt essentially it was the SALDO requirements that affect the horizontal geometry of the Plan that were most applicable in his opinion to their review of the Special Exception Application. Mr. VanLuvanee stated compliance with the LID Ordinance requirements for stormwater management requires much more than the horizontal geometry lay out, and Mr. Majewski agreed. Mr. VanLuvanee stated this would require a lot of detailed engineering, and Mr. Majewski agreed. Mr. VanLuvanee stated this is not something that

the Applicant has to submit with a Sketch Plan Application, and Mr. Majewski agreed that this is not required; however, the Applicant in this case did do infiltration testing, and that testing showed that the best area for infiltration was right beneath where the Hospital is proposed. Mr. VanLuvanee stated while he understands this, he feels that if the Applicant had not done testing, Mr. Majewski would probably have said that the Applicant should have done testing because testing can affect the lay out of the buildings, and Mr. Majewski agreed.

Mr. VanLuvanee stated he reviewed the LID Ordinance and tried to see where the objective criteria are that indicate what must be done and what must not be done and he kept coming back to references to a Manual – Pennsylvania Stormwater Best Management Practices Manual, Draft April, 2006. Mr. VanLuvanee stated he has read that Manual, and the Manual gives an Applicant some flexibility in designing projects and selecting stormwater management practices, and Mr. Majewski agreed. Mr. VanLuvanee stated it gives the flexibility to mix and match some of the stormwater management techniques in order to come up with a project, and Mr. Majewski agreed.

Mr. Truelove objected as they do not have the document before them so it is a characterization. Mr. Majewski stated he did give Mr. Majewski an opportunity to disagree, and he did not do so. Mr. Truelove stated he is objecting to the question because he is not sure that Mr. Majewski is able to answer some of those questions. Mr. VanLuvanee stated he already answered the question. Mr. VanLuvanee stated Mr. Majewski also advised that he was one of the authors of the Ordinance, and Mr. Truelove stated what he is objecting to is the reference to the other document. Mr. Malinowski stated since Mr. Majewski has answered the question, he would overrule the objection.

Mr. VanLuvanee asked how many Land Development Plans has the Township processed under this new Ordinance, and Mr. Majewski listed the following: Capstone Terrace, Harmony Lane, Sandra Middlemiss, Makefield Elementary School expansion, and the Ferri Tract.

Mr. VanLuvanee asked if he would agree that the LID Ordinance results in an Applicant having dialogue with the Township to reach a compromise with respect to what stormwater management practices should be used in connection with a particular project, and Mr. Majewski agreed. Mr. VanLuvanee stated the Manual gives a series of techniques, and the Applicant's engineer comes up with a proposal which is reviewed by the Township engineer, and there is dialogue and hopefully they reach an accommodation that everyone finds satisfactory, and Mr. Majewski stated this is the goal. Mr. VanLuvanee asked if Mr. Majewski was suggesting that the Zoning Hearing Board try to engage in that dialogue with the Applicant, and Mr. Majewski stated he was just pointing out flaws in the Plan that was submitted. Mr. VanLuvanee stated this would be what Mr. Majewski believes to be a flaw, and Mr. Majewski agreed.

Mr. VanLuvanee noted Page 109, Line 23 of the Transcript where Mr. Truelove stated, "the building footprint where it's located based on what you said, will have to be relocated," and Mr. Majewski had stated, "that is correct." Mr. VanLuvanee stated Mr. Majewski was generally speaking about the fact that there were higher infiltration rates under the area where the building was than were present in some other areas, and felt that this was one of the best infiltration areas and for that reason would recommend that the building be relocated, and Mr. Majewski agreed. Mr. VanLuvanee asked Mr. Majewski if he can point to a spot in the Ordinance that he believes would mandate the relocation of the building, and Mr. Majewski stated he would have to look through the SALDO, but feels there are Sections in there.

Mr. VanLuvanee noted Page 110 of the Transcript where in answer to Mr. Truelove's question as to whether he had reviewed SALDO 178.126C in his analysis, his answer was that Section states that "all requests for Waivers or modification shall be in writing," and added that "obviously they are not at this stage yet." Mr. VanLuvanee asked if he was suggesting that the Applicant should have been at that stage, and Mr. Majewski stated he believed that when Brian Zappalla from Bohler had testified, he stated the Plan fully complied with all Township Ordinance, and this is why he cited that a number of Waivers probably are required; and if Waivers are required, they should be stated but obviously they are not at that stage yet since all Waivers are not yet known. Mr. VanLuvanee stated that Waivers that need to be requested generally are not known until an Applicant has completed at least Preliminary Plan engineering, and Mr. Majewski agreed.

Mr. VanLuvanee stated they then moved off Mr. Majewski's expert testimony into his lay testimony with respect to traffic. Mr. VanLuvanee stated Mr. Majewski had offered a number of photographs and discussed the dates that the photos had been taken and indicated that generally they were taken September 10, October 12 and October 17 although he would have to confirm them. Mr. VanLuvanee asked if he did confirm the dates, and Mr. Majewski stated there were taken September 10, October 14 which was a Tuesday, and October 17. Mr. VanLuvanee asked if he is able to tell which pictures were taken which days, and Mr. Majewski stated he would have to go back and check. Mr. VanLuvanee stated he also advised that they were generally taken in the afternoon between 5 and 6, and Mr. Majewski agreed.

Mr. VanLuvanee stated some of the pictures were taken more than a month before the other pictures, and Mr. Majewski agreed. Mr. VanLuvanee asked if he took pictures on those days because he happened to have his camera or did he have his camera in the car every day, and Mr. Majewski stated he often has his camera in his bag that is zipped up and does not have time to take it out. He also stated sometimes the camera is at work and other times he does not drive by that area because he wants to avoid the traffic so he takes an alternate route home. Mr. VanLuvanee asked if these were the only three days that he went through that intersection, and Mr. Majewski stated they were not.

Mr. VanLuvanee stated when he went through the intersection he assumes that he was not looking for days when the traffic conditions were the best, and Mr. Majewski stated he was looking for pictures that were representative of back-ups in that area although he agreed it does not occur every day. Mr. VanLuvanee asked if it would be fair to say that of the days he passed through that area, that he took the pictures on the days that the traffic conditions were the worst, and Mr. Majewski disagreed. He stated it is quite often worse than shown in the pictures. Mr. VanLuvanee asked why he did not take pictures when it was worse, and Mr. Majewski stated he did not have the camera available. Mr. VanLuvanee stated he took the pictures on the days when he had the camera that were the worst.

Mr. Truelove objected and stated he does not feel that is what Mr. Majewski said.

Mr. Malinowski sustained the objection.

Mr. VanLuvanee stated these were all the questions he had for Mr. Majewski.

Mr. Malinowski stated this matter will be heard again on February 17 at 7:00 p.m. Mr. Kim moved, Mr. Gruen seconded and it was unanimously carried to continue the matter to February 17, 2009 at 7:00 p.m.

There being no further business, Mr. Gruen moved, Mr. Kim seconded and it was unanimously carried to adjourn the meeting at 10:00 p.m.

Respectfully Submitted,

David Malinowski, Chairman