

TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – NOVEMBER 15, 2011

The regular meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on November 15, 2011. Chairman Bamburak called the meeting to order at 7:00 p.m.

Those present:

Zoning Hearing Board: Paul Bamburak, Chairman
 Gregory J. Smith, Vice Chairman (left meeting in progress)
 Jerry Gruen, Secretary
 Keith DosSantos, Member
 Anthony Zamparelli, Member
 James McCartney, Alternate Member (joined meeting in progress)

Others: Robert Habgood, Code Enforcement Officer (left meeting in progress)
 David Truelove, Township Solicitor
 James Majewski, Township Engineer
 Barbara Kirk, Zoning Hearing Board Solicitor

Absent: Daniel McLaughlin, Supervisor Liaison

APPEAL #06-1372 – PETER ORLOFF AND JOY GRACE

Mr. Peter Orloff and Ms. Joy Grace were present. Mr. Bamburak stated the Applicants were going to take pictures of the current state of the property, and these were provided to the Board this evening. Ms. Kirk stated Mr. Habgood also went out to the property and took photos as well. A copy of these were provided to the Applicants.

Mr. Bamburak stated the last time the Zoning Hearing Board heard this matter, the Applicants indicated that in the time that has elapsed since the Board first heard the issue in 2006, the materials that they had removed from the floodplain have naturally returned; and the Applicants agreed.

Ms. Kirk stated the Variance request was for the removal of brush within the creek bed, and they were also requesting a Variance for removal of additional trees. She asked if they intend to remove anything further at this point, and the Applicants stated they do not. She stated in light of the fact that due to the lapse of time, things have been restored back substantially similar to the original condition of the property before this began with the Variance request, the best course of action would be for the Applicant to withdraw their petition. The Applicants were in agreement with this.

Ms. Kirk asked if the four photographs taken by Mr. Habgood accurately depict the conditions of the property at this time, and the Applicants agreed that they do. The photos taken by Mr. Habgood were marked as Exhibit B-8 as the photographs for the condition of the property. The photos provided by the Applicants were marked as Exhibit A-5.

Mr. Orloff and Ms. Grace requested that their petition be withdrawn. Ms. Kirk stated since they have withdrawn their petition, there is nothing further for the Board to do.

Mr. Smith and Mr. Habgood left the meeting at this time, and Mr. McCartney joined the meeting at this time.

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

Mr. Bamburak stated when they last met, they had continued this matter indefinitely in order for Mr. Smolow to make Application to Doylestown regarding the subpoenas.

Ms. Kirk stated Mr. Smolow did file his Motion to compel responses to subpoenas as the Board requested. That Motion was originally scheduled for a Hearing before the Court on 8/22/11, but that Hearing had to be continued as the Township solicitor was not available to attend. As a result the matter was scheduled before the Court on 10/28/11 at which time all of the attorneys were present to either oppose or support the Motion. Ms. Kirk stated at her request, Judge Fritsch did take the matter under advisement so that a decision could be entered in order for the Zoning Hearing Board to proceed with tonight's Hearing. The Decision that was entered by Judge Fritsch was dated 10/31/11 which granted a portion of the Motions to compel filed by Mr. Smolow whereby the portion of the Motion dealing with the subpoenas to the Delaware River Joint Toll Bridge Commission was quashed, and the portion of the subpoena directed to PennDOT was granted in part and denied in part. Specifically PennDOT was directed to furnish traffic volume data concerning the area of the I-95 ramp at Route 332 from 2008 to the present. PennDOT was not required to furnish any documents or reports that were created in conjunction with the deliberative process of the proposed Scudders Falls Bridge Expansion Project.

Ms. Kirk stated upon receipt of that Order, she submitted it to all counsel, and she believes that Mr. Smolow has since had communication with the general counsel for PennDOT, Lee Silverman, Esquire. Based on the last correspondence she saw, traffic volume data was provided to Mr. Smolow; and she understands that there was an agreement that neither a representative from PennDOT nor Mr. Silverman needed to be present at tonight's Hearing. She asked Mr. Smolow if this is correct.

Mr. Smolow stated the Court did enter an Order granting and denying in part the Motion. He stated he did receive certain documents from PennDOT in response to the subpoena. He stated counsel for PennDOT has verified that he has made a reasonable search of its records at District 6 and that the documents that they had provided represent, according to PennDOT, the totality of traffic volume data for the area of I-95 southbound ramp to Route 332. Mr. Smolow stated in addition to this he did receive from the Toll Bridge Commission certain documents adding most of the documents he was directed to look at by the Bridge Commission were documents that appeared on the Website, and at this time he would like to make a Record as to what he received from both the Toll Bridge Commission and PennDOT. He stated he has conferred with Mr. VanLuvanee, and he has agreed to allow him to go out of order to offer certain documents into the Record.

Mr. VanLuvanee stated while this is true, there are some preliminary matters he would like clear up. He stated the Transcript of the 6/21/11 Hearing indicates that there were four members of the Zoning Hearing Board present, and he is not sure whether this is accurate or whether there were five. He stated he is asking this because the Transcript indicates that Mr. Bamburak, Mr. Zamparelli, Mr. Gruen, and Mr. DosSantos were present. Ms. Kirk stated Mr. McCartney was also present as the Alternate Member; and Mr. VanLuvanee stated he wanted to make sure of this since he saw Mr. McCartney was seated this evening but the Transcript of 6/21/11 was not clear whether or not he was there that evening. It was agreed that the Transcript will be corrected so that it is clear that the same people that are present this evening are the same that were present at the 6/21/11 Hearing.

Mr. VanLuvanee stated Mr. Smolow has accurately represented the exchange of e-mail he had with Mr. Silverman; but he wants to make it clear, that while Mr. VanLuvanee did agree that he could offer certain documents out of order, he did not indicate that he was waiving any Objection to them, and he would like the opportunity to make those Objections as he deems appropriate as Mr. Smolow makes his offers.

Ms. Kirk asked Mr. Smolow if he is offering these specific documents to be independent Exhibits before the Board, or was he requesting that these documents be provided to any traffic engineer or expert he intends to present. Mr. Smolow stated he intends to do both.

Mr. VanLuvanee stated this is one of his Objections. He stated the Order was specific as to the subject matter of the Remand, and generalized studies from third parties who are not present, while they may be under appropriate circumstances a basis for an expert to testify, are not independent evidence nor are any of the studies admissible otherwise without some type of authentication. He stated this is the reason he wanted to make an introductory statement because he knows what Mr. Smolow wants to introduce.

Mr. VanLuvanee stated one of the studies he wants to introduce is the Environmental Impact Assessment for the Scudders Falls Bridge Project that was done by the Delaware River Joint Toll Bridge Commission. Mr. VanLuvanee stated he has reviewed that document which is several hundred pages long dealing with subject matter that is far-ranging of which traffic is three or four pages out of a total of three or four hundred pages. Mr. VanLuvanee stated he feels they have a large enough Record in this case already, and there is a very limited scope of Remand; and to throw documents into the Record for the sake of cluttering the Record in his opinion is inappropriate and not consistent with Judge Fritsch's Remand Order.

Mr. Smolow stated all the documents that he intends to offer are public documents created for the Bridge Project, one of which is the Environmental Assessment which contains various portions in the document including traffic information regarding the design and construction and traffic volumes that are anticipated as a result of the Project, and he does not feel it is fair for the Board to cut and paste pieces of the Report. He stated it is a matter of public record and it is what he was directed to by the Bridge Commission in response to the subpoena.

Mr. Bush suggested they allow this to go forward, and Mr. VanLuvanee can Object when he feels the information is superfluous; and the Board will make a ruling at that time.

Mr. VanLuvanee stated he has read the entire Environmental Impact Assessment, and he would represent to the Board that there is no mention in that report of the proposed Aria Hospital Medical Office Building. He stated the Remand Order is specific, and states testimony may come in on certain elements each of which starts by a statement, "The impact of the proposed Hospital project upon traffic." He stated it is not the impact of the Scudders Falls Bridge Improvement Project so a study that does not ever mention the Aria Hospital Medical Office Building project in of itself clearly is not within the scope of the Remand Order.

Mr. Truelove stated he feels one of the issues he would like to deal with this evening which is relevant from the Remand Order and also from the Ordinance is whether the traffic engineer's report in the first instance was credible and whether information for background traffic was accurate. He stated there is specific information in the Environmental Assessment and in the 2004 report from the Bridge Commission that talks about traffic volume at 332 and I-95 which is within the study area so to suggest that it is not relevant to the expert testimony they will hear tonight is incorrect.

Mr. VanLuvanee stated this is not what he said. He stated he said the report itself is not relevant. He stated if Mr. Truelove wants to cross examine using data from that report and ask the witness whether he took it into consideration or whether if he had taken it into consideration if it would change his opinion, he would agree with Mr. Truelove that this is proper cross examination arguably within the scope of what Judge Fritsch said; but to take the blue binder that Mr. Smolow has and throw it into the Record for no good reason, is in his opinion totally inappropriate.

Mr. Truelove stated he would submit that there are portions of that report that are specifically appropriate and relevant to the specific issues before the Board independent of expert testimony. Mr. VanLuvanee stated he would assume that he has separated them out and is prepared to offer the relevant portions as part of his cross examination; but they do not come in independently as Mr. VanLuvanee would have no ability to cross examine. Mr. Truelove stated he felt this was the whole reason why the Joint Toll Bridge Commission and PennDOT were not going to be present this evening because it was said they did not need someone to authenticate the Records, otherwise Mr. Silverman or his engineer would be present.

Mr. Bamburak stated the Board needs to recess in order to be able to discuss this with Ms. Kirk. The meeting was recessed, and then reconvened at 7:30 p.m. Mr. Bamburak stated Ms. Kirk provided some explanation about how this new information should be handled. Mr. Bamburak advised Mr. Smolow that his experts can review the new information and provide testimony on it, but they are not going to enter any of the new information as independent Exhibits.

Mr. Smolow stated he would like to offer a few of these documents independently to make a Record, and Mr. Bamburak stated they are not going to enter them independently although Mr. Smolow's experts could introduce them as part of their testimony. Mr. Smolow stated some of it has nothing to do with the expert testimony. He stated one of the issues this evening as he understands the Order, is that the Board is supposed to make a record; and the record is supposed to involve and be concerned with the effect of the Hospital taking the Scudders Falls Bridge Project into consideration so he does want to offer independent evidence of the Scudders Falls Bridge Project itself, and he wants to make a Record as to what he is offering. Mr. Bamburak stated the issue is how Aria effects the traffic and not how the Scudders Falls Bridge effects the traffic in the Aria area. He stated Mr. Smolow's experts can use the information, and Mr. Smolow can ask questions of the experts, and they can give their opinion; but it will not be entered as a separate Exhibit.

Mr. Smolow stated he wants to make a Record of the documents that he wants to offer, but Mr. Bamburak stated by making this Record they are then actually entering them at that point; and Ms. Kirk stated he is trying to make an offer of proof.

Mr. Smolow stated the first Exhibit is a Memorandum of Agreement between the Delaware River Joint Toll Bridge Commission and PennDOT dated 1/10/03. He stated he is offering this into evidence to show the relationship between the Bridge Commission and PennDOT in terms of the design and planning for the Scudders Falls Bridge. Mr. VanLuvanee stated he does not object to the authenticity of the documents, but he does object to their relevance or admissibility because it is beyond the scope of the Remand.

Mr. Smolow stated the next Exhibit is a letter dated 6/20/11 from the counsel for the Bridge Commission attached to which is a document entitled “Technical Memorandum Interstate 95 Scudders Falls Bridge Traffic Study,” and Mr. Smolow stated he represents to the Board that this is the traffic study that the Bridge Commission relied upon in planning the Scudders Falls Bridge Project. Mr. VanLuvanee stated the documents speak for themselves, but the document independently in his view is not admissible because it is beyond the scope; and he would represent to the Board that if they were to read every page, they would find no mention of the proposed Hospital and Medical Office Building.

Mr. Bamburak asked Mr. Smolow how many more of these has, and Mr. Smolow stated he has four more from the Bridge Commission.

Ms. Kirk stated she presumes that Mr. VanLuvanee has a standing Objection as to the relevance of these documents; and Mr. VanLuvanee stated his question is how they are going to handle this for Record purposes. He stated he does not feel they should even come into the Record. Ms. Kirk stated this is an offer of proof that Mr. Smolow is insisting on what he is requesting, and the Board has not made a determination on those specific documents.

Mr. Smolow stated he has a document entitled, “Project Status Update” obtained from the Bridge Commission’s Website for the Scudders Falls Bridge Project, entitled “I-95 Scudders Falls Bridge Improvement Project – Project Status Update.” Mr. Smolow stated he would like to explain why he wants to bring these up, and Mr. Bamburak asked that he just provide the title of the documents. Mr. Smolow stated this document describes, among other things, the status of the planning for the Project. Mr. VanLuvanee stated with regard to that document, any day you go on the Website you can find that document as well as other documents with regard to the Scudders Falls Bridge Project, and he himself printed the Project Status Update as of today. Mr. VanLuvanee stated he has no objection to Mr. Smolow offering that document in and of itself. He stated it has nothing to do with traffic, but it may have relevant background information so he would not object to this document.

Mr. Bamburak stated when they started this Remand three to four months ago, Mr. VanLuvanee made a point of stating there should be no more information, just the information that existed at the time the Appeal was originally heard; and now Mr. VanLuvanee is printing out new information from a Website. Mr. VanLuvanee stated this is still his point, and he was not going to offer this information.. He stated he assumes when Witnesses start to testify, they are going to talk about the Scudders Falls Bridge Project; and one of the things that the Board may decide they have to determine is whether any of this evidence is so speculative as to be not admissible. He stated for that reason, the Board is probably going to want to know where the Scudders Falls Bridge Project stood at certain timeframes before they make this determination. He stated this will go to the relevance of the information especially since the Judge has indicated that the Board can consider the impact of the Scudders Falls Bridge Improvement Project on the Hospital project or traffic generated by the Hospital or in light of the Scudders Falls Bridge improvement which is the way the Judge worded it.

Mr. Smolow stated he worded it, “What is the impact of the Hospital taking the Scudders Falls Bridge Project under consideration.” Mr. VanLuvanee stated his point was that the Board is going to have to know something about the project in order to determine what is relevant; and for that reason, he does not have an objection to having a status report so that the Board can determine what was the status of the project in 2008, what it is today, and when it may be built so the Board can determine whether any of this is relevant at all.

Ms. Kirk asked the date of the Project Status Report that Mr. Smolow is offering, and Mr. Smolow stated it is 10/28/11. Mr. VanLuvanee stated the one he printed out today was 11/15/11. Mr. VanLuvanee stated he does not have an objection to this document.

Mr. Gruen stated Mr. VanLuvanee is willing to agree that the Board is adult enough to decide what is relevant and what is not; however, he has indicated that they are not adult enough to determine what is relevant and what is not for the documents that Mr. Smolow is offering. Mr. VanLuvanee stated this is not what he said. He stated he said the Judge has given the Board very specific parameters; and a document that never mentions the Hospital and has three or four pages of information about traffic and four hundred pages of other information that has nothing to do with the Remand Order is clearly not relevant. Mr. Gruen stated he feels the Board can determine this themselves; and Mr. VanLuvanee stated while they could, and he feels the Board has already made a Ruling with respect to some of this background documentation. Mr. Gruen stated he feels it should go both ways, and Mr. VanLuvanee stated he will therefore object to this document too.

Mr. Smolow stated the next document is dated 10/31/11 from the Bridge Commission also on the Bridge Commission’s Scudders Falls Bridge Website, entitled “I-95 Scudders Falls Bridge Improvement Project.” Mr. Smolow stated he offers it because it states, “Construction can begin in mid-2013,” and counsel for Aria just stated that his position is

that the Bridge is speculative. He stated this is the Bridge Commission's statement that in its view construction can begin in 2013, and they are waiting for a Federal Permit. Mr. VanLuvanee stated it is also waiting for funding.

Mr. DosSantos asked Mr. Smolow if he has a list of Exhibits that he is anticipating bringing in, and Mr. Smolow stated he does not.

Mr. Smolow stated he has the 7/30/10 Press Release from the Office of the Governor of the State of Pennsylvania concerning the project moving forward.

Mr. Smolow offered the Environmental Assessment dated 10/2009 – I-95 Scudders Falls Bridge Environmental Assessment Draft Section 4F Evaluation Volume I Environmental Assessment entitled "Delaware River Joint Toll Bridge Commission."

Mr. VanLuvanee stated he renews his Objection.

Mr. Smolow stated these are all the documents he wanted to offer. Mr. Bamburak stated Mr. Smolow's professionals are free to use the documents, but they are not going to be entered as independent Exhibits.

Mr. Smolow stated he would like to offer one more Exhibit which is a composite document produced by PennDOT in response to the Court's Order directing PennDOT to comply with the subpoena. He noted the map which had to be blown up to understand that the map contains traffic volume data, and he blew up the legend as well as a section of the map which is the vicinity of the I-95 332 intersection site in Newtown Township and Yardley. He stated in addition today he received traffic count data from PennDOT in response to the subpoena; and it was explained to him that this data is for the I-95 segments immediately north and south of 332, the 332 segments east and west of 95, and a segment known as State Route 8011 which is the southbound ramp of I-95 at 332. He stated this is for the period 2009/2010.

Mr. VanLuvanee stated he has the same basic Objection and a further Objection with respect to this document in that the documentation was produced by Mr. Silverman who appeared at the last Hearing for PennDOT. He stated in an e-mail Mr. Silverman sent to Mr. Smolow yesterday at 4:50 p.m. it states, "The information contained in the traffic count histories are produced by the Department as an internal management for State-maintained highways and is not to be used for other purposes. Information is compiled for the Department's computerized roadway management system, and is subject to change without notice. Use of any or all of the information for purposes other than those intended by the Department may not satisfy other accuracy and completeness

requirements, and the Department does not warrant that the information is accurate or complete.” Mr. VanLuvanee stated with this caveat, if the Board is going to admit this, he would also ask that they also admit Mr. Silverman’s email with it. He stated if they are not going to admit it, this is a different issue.

Mr. Bamburak stated they have already indicated that they are not going to admit it, but he feels the statement is standard boiler plate, and he is sure the information will be useful to both traffic engineers in their professional capacities, and they can look at the numbers and judge whether they are realistic or not. Mr. VanLuvanee stated he would agree with this assessment.

Mr. Smolow stated he would like to make one more argument for the documents he has offered from the Scudders Falls Bridge Commission. He stated three of the documents relate to the status of the project – the Governor’s Press Release, the status report showing that this is in the preliminary design stage, and the piece which indicated that the Bridge Commission is waiting for approval of the Federal Permit and that construction could begin in 2013. Mr. Smolow stated as the Board knows he cannot subpoena or compel a witness from the Bridge Commission to attend the Hearing, and the Court will not support the Zoning Hearing Board’s subpoena to do that. Mr. Smolow stated the reason the Court sustained the Commission’s petition to quash was its argument that it was immune from the Board’s subpoena. He stated the only way to get the information into the Record is by producing the documents from the Bridge Commission, and he is offering them for that purpose because he cannot produce a witness from the Bridge Commission.

Mr. Truelove stated the Township joins in this request for introduction of the Records independently.

Mr. Bamburak stated they have already ruled that it is not going to be in, but he does feel that it is useful information; and the traffic counts are important information that both engineers can look at and use it to either support or debunk the Aria traffic information.

Mr. Smolow stated counsel is going to raise the status of the Bridge, and he claims that it is speculative, and has already stated this on the Record; and Mr. Smolow stated he would like to rebut that. Mr. Smolow stated one of the ways of rebutting it is by the Bridge Commission’s own documents saying they are at the Preliminary Plan stage, and they have filed their Federal Permit Application. Mr. Bamburak stated it is about traffic and not about building the Bridge. He stated they can use the traffic numbers that they got from the Bridge Commission.

Ms. Kirk asked who would be presenting their first Witness, and Mr. Truelove stated he will and preliminarily he would like to raise one request. He stated in the last three to four months he has had the opportunity to review the Transcripts of the prior Hearing; and it is abundantly clear that the Applicant who has decided not to proceed with submitting additional information following the Remand did not meet its burden of going forward with sufficient evidence based upon the Ordinances that are at issues and have governed this Hearing. He noted specifically Section 200-98 A3A which states, “That the proposed uses 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. Truelove stated no information was submitted about the Comprehensive Plan. He also noted Section 178 Attachment 5 Subdivision and Land Development Exhibit 3 Traffic Impact Study Requirements which are the minimal requirements for the Applicant Sub-Section 5.

Ms. Kirk asked Mr. Truelove what Ordinance he was reading from, and Mr. Truelove stated the first one was 200-98 Special Exception Applications of the Zoning Ordinance that incorporates Section 178 of the Subdivision and Land Development Ordinance which has an attachment included within 178 – Traffic Impact Study Requirements which has Sub-Section D5 – Analysis of Transportation Impact. Ms. Kirk stated that is from the Subdivision and Land Development Ordinance which was incorporated into the Zoning Ordinance for Special Exception, and Mr. Truelove agreed.

Mr. Truelove stated it reads, “Total future traffic impact shall be calculated on the study area, and the study area is separately defined as an area within one half mile of the specific location.” Mr. Truelove stated testimony by the traffic engineer for the Applicant specifically admitted that they did not review developments within the one half mile area. Ms. Kirk stated she assumes that Mr. Truelove will be directing relevant portions of that testimony to the Board during the course of these proceedings, and Mr. Truelove stated he will ask questions about that and other issues related to that. He stated they are forcing the Township to make the case that they should not have to. He stated the minimum requirements have not been met, and he is making a record requesting that the Application be denied because of the Applicant’s failure and refusal to submit additional information consistent with its minimum requirements.

Mr. VanLuvanee stated when the Board rendered a majority Decision to grant the Special Exception, it was the Township and RAFR that Appealed. He stated that Decision has not been reversed and remains the Decision of the Zoning Hearing Board. He stated upon Application by RAFR and the Township, they were granted the opportunity to supplement the Record. Mr. VanLuvanee stated as the successful Applicant in this case, he has no burden to supplement the Record. He stated the Court did not determine that the evidence was relevant, but they determined that it might be relevant; and in the supplemental Order that the Court entered, in the 3/8/11 letter the Court indicated that:

“With regard to the issue of clarification and the manner in which supplementation evidence may be presented either through cross examination of previous Witnesses or the calling of new Witnesses is within the discretion of the Board.” Mr. VanLuvanee stated that letter clearly does not contemplate that Mr. VanLuvanee should present evidence, but indicates that they may recall his Witnesses, who are both here, about whom they questioned their limitation on the rights of cross examination. Mr. VanLuvanee stated it also states they can present new Witnesses if they wish to. Mr. VanLuvanee stated it does not say that Aria has a new burden imposed on it that it did not have the last time they were here. He stated this is not a case for reconsideration of the Board’s previous Decision, but is a case where these two Appellants have been afforded the right to supplement the Record.

Ms. Kirk stated based upon the complexity of the issues and the basis of the Remand Order from the Court, she would recommend to the Board that before they render a Decision each of the attorneys will submit proposed Findings of Fact and Conclusions of Law as to burden of proof and whether those burdens have been satisfied as well as the issues raised in the Remand Order are addressed for the Board to consider.

Mr. VanLuvanee stated he feels that on the basis of the Remand Order, the issue is whether or not any evidence that the Board received during the Remand Hearing is sufficient to cause the Board to reverse any Findings of Fact or Conclusions that the Board reached with respect to the subject matter of the supplementation and not with respect to matters which are beyond the scope of the supplementation. Ms. Kirk stated she trusts that Mr. VanLuvanee will include that in any Brief that he submits to the Board.

Mr. Truelove called Mr. Kenneth O’Brien on cross examination, and Mr. O’Brien was sworn in. Mr. Truelove asked if he is still a representative for McMahan, and Mr. O’Brien agreed. Mr. Truelove stated he is present to testify about traffic issues, and Mr. O’Brien agreed. Mr. Truelove stated since the last time he testified which he believes was 10/21/08, he has not updated his prior report or information, and Mr. O’Brien agreed. Mr. Truelove stated Mr. O’Brien has no new studies, no new data, and no new numbers, and Mr. O’Brien agreed. Mr. Truelove stated during the time he prepared his first report, he had not specifically contacted the Lower Makefield Township engineer or traffic engineer about any issues related to this project; and Mr. O’Brien stated he did contact Lower Makefield Township. Mr. Truelove stated he contacted the staff but never contacted specifically the Township engineer or the Township’s traffic engineer, and Mr. O’Brien agreed. Mr. Truelove stated since that time he has not contacted the Township engineer or the Township traffic engineer about these issues as well, and Mr. O’Brien agreed.

Mr. Truelove stated at the time of his original testimony, Mr. O'Brien had reviewed some developments, and he specifically noted the Capstone Development which is off of Stony Hill Road which is within one half mile radius of the proposed site, but this was the only proposed development he had actually reviewed in terms of traffic impact; and Mr. O'Brien agreed. Mr. Truelove stated since the 10/21/08 testimony Mr. O'Brien has not performed a study of any other developments within one half mile radius of the site, and Mr. O'Brien agreed.

Mr. Truelove asked Mr. O'Brien if he would agree that the Interstate 95 and Route 332 interchange is within one half mile of the proposed site, and Mr. O'Brien stated he believes so.

Mr. Truelove stated the term queuing means stacking up and backing up in traffic, and Mr. O'Brien agreed. Mr. Truelove asked Mr. O'Brien if he agrees that some of the longest queues which would form depending on the time of day and traffic conditions could be up to 1,600 feet long; and Mr. O'Brien stated he does not recall this specifically.

Mr. Truelove stated he believes that Mr. O'Brien stated eighty cars was the length of the queue, and he had estimated twenty feet per vehicle; but Mr. O'Brien stated he does not specifically recall this. Mr. Truelove asked Mr. O'Brien if he would agree that 1,600 feet is over one quarter mile in length, and Mr. O'Brien agreed. Mr. Truelove stated a quarter mile is 1,320 feet in length, and Mr. O'Brien agreed.

Mr. Truelove stated in Mr. O'Brien's analysis he concluded that some queues exceed over half the radius he looked at, and Mr. O'Brien stated he does not specifically recall the details of the queuing analysis that he provided. Mr. Truelove stated he is not quarreling with that, if indeed the Record reflects this; and Mr. O'Brien agreed.

Mr. Truelove asked if Mr. O'Brien, before his prior report, ever reviewed the Lower Makefield Township Comprehensive Plan, and Mr. O'Brien stated he did not. Mr. Truelove asked if he has not reviewed it since that time, and Mr. O'Brien stated he has not. Mr. Truelove asked Mr. O'Brien if he has reviewed any of the Scudders Falls Bridge Project information; and Mr. O'Brien stated he was aware of the Project, and since that time he has become more aware of it. Mr. Truelove asked Mr. O'Brien if he has reviewed any of the traffic information related to that project, and Mr. O'Brien stated he has. Mr. Truelove asked if he has submitted any additional reports or information updating his prior opinion based upon the Scudders Falls Bridge Project, and Mr. O'Brien stated he has not submitted any additional information.

Mr. Truelove stated at his first testimony he had not reviewed any information about developments within Newtown Township, and Mr. O'Brien agreed. Mr. Truelove stated Newtown Township is immediately adjacent to the proposed site where the Hospital is proposed to be located, and Mr. O'Brien agreed. Mr. Truelove stated since that time he has not reviewed any development information for Newtown Township, and Mr. O'Brien stated he has not been provided any additional information.

Mr. Truelove stated the traffic counts Mr. O'Brien did were done in December, 2007; and Mr. O'Brien agreed. Mr. Truelove stated they anticipated the site to be built in 2009, and Mr. O'Brien agreed. Mr. Truelove stated no new data has been computed since then, and Mr. O'Brien agreed.

Mr. Truelove asked if PennDOT will want another study for that information, and Mr. VanLuvanee stated they will not in the course of this proceeding. He asked what timeframe he is talking about. Mr. Truelove objected to the attorney answering, and Mr. VanLuvanee stated he is Objecting to the question due to lack of specificity. Ms. Kirk asked Mr. Truelove to narrow the scope of his question as to when PennDOT would want an updated study. Mr. Truelove stated at some point before the project is built, PennDOT would want an updated Traffic Study; and Mr. O'Brien agreed.

Mr. Truelove stated Mr. O'Brien testified twice last time – 9/23/08 and 10/21/08, and Mr. O'Brien agreed. Mr. Truelove asked Mr. O'Brien if he looked at his prior Testimony in preparation for tonight, and Mr. O'Brien stated he did. Mr. Truelove asked Mr. O'Brien if he recalls at one point in the 9/23 Testimony, he said he did look at information regarding population and growth rates for the surrounding areas, and Mr. O'Brien agreed. Mr. Truelove stated at the last Hearing, Mr. O'Brien stated he did not look at the population growth rates; and Mr. O'Brien stated he does not recall this. Mr. Truelove noted Page 23 of the 10/21/08 Transcript.

Mr. VanLuvanee Objected and stated he fails to see how this is relevant to the two areas that were identified – one of which was Newtown Development and whatever impact that might have and the second would be the Scudders Falls Bridge Project. He stated these questions Mr. Truelove is asking are cross examination, and he feels Mr. Truelove had adequate opportunity to cross examine; so Mr. Truelove is essentially asking for an opportunity to re-cross but not limiting the re-cross to the subject matter of the Remand. Mr. Truelove stated he would submit that population growth and development in surroundings areas would include Newtown Township.

Mr. Bamburak stated he will allow Mr. Truelove some leeway to flesh out the argument. Mr. VanLuvanee stated he did give him a little, and this is why he is now Objecting.

Mr. Truelove noted Page 23 of the 10/21/08 Transcript Lines 3 to 22, and asked Mr. O'Brien if based on that Testimony does he now agree that on 10/21/08 he had indicated that he had not looked at any other information for population and growth; and Mr. O'Brien stated he does not feel this is what he was saying, and he feels what he said was when they are looking at background growth, they do not necessarily look at population or employment growth since that does not necessarily translate to traffic volume growth; but they did look at the population growth and the employment growth. Mr. Truelove stated the Testimony on 10/21 speaks for itself.

Mr. Truelove stated during prior Testimony Mr. O'Brien used Institute of Transportation Engineers and used what he determined to be comparable hospital access points – Abington and Jeanes Fox Chase. Mr. VanLuvanee Objected because he feels this is beyond the scope of the Remand Order. He stated these questions could have been asked the last time, and they have nothing to do with what Judge Fritsch determined the Township and RAFR were going to do which was put supplemental Testimony on, and they are just rehashing old stuff.

Mr. Truelove stated he is laying a foundation because in the Comprehensive Plan, which is something they were allowed to investigate and is part of the mandated review for the Special Exception Ordinance, it does talk about review of regional planning and Municipalities and looking at those other regions so it will become abundantly clear why it is relevant. Mr. VanLuvanee stated this Witness was called as a traffic engineer and not as a planner or an engineer. Mr. Truelove stated those issues are referenced in the Comprehensive Plan as it relates to transportation. Mr. VanLuvanee stated the point is the Witness already said he did not look at the Comprehensive Plan, and Mr. Truelove stated he will cross examine him about that as well. Mr. VanLuvanee stated that opportunity for cross examination Mr. Truelove already had. He asked Mr. Truelove to show him in the Record that he was denied the opportunity to cross examine Mr. O'Brien about the Comprehensive Plan.

Ms. Kirk stated she is recommending to the Board that Mr. Truelove be granted some leeway to flush out and lay out his foundation; and if it turns out that this Witness is not applicable to answering questions as to the Comprehensive Plan, Mr. VanLuvanee will address this issue in Argument.

Mr. Truelove stated the Application in this case is not a Subdivision and Land Development Application, and Mr. O'Brien agreed. Mr. Truelove stated Mr. O'Brien relied on at least a half mile radius which is from the SALDO Ordinance and not the Zoning Ordinance, and Mr. O'Brien agreed.

Mr. Truelove asked Mr. O'Brien if he has conducted a site visit since his last Testimony, and Mr. O'Brien stated he has been to the site. Mr. Truelove stated he has not submitted any additional reports based upon the site visit, and Mr. O'Brien agreed. Mr. Truelove asked if he has done a queue analysis since then, and Mr. O'Brien stated he has not.

Mr. Truelove stated Mr. O'Brien's prior opinion was that the traffic additions at the site will improve with the Hospital and the improvements they propose. Mr. VanLuvanee asked if he is referring to a specific site or is he just generalizing Mr. O'Brien's conclusion; and Mr. Truelove stated he believes that was Mr. O'Brien's conclusion. Mr. O'Brien stated he believes that he said that in general with the improvements that they propose, the Hospital was able to mitigate its impact.

Mr. Truelove stated part of Mr. O'Brien's assumption is based upon background traffic numbers that he used, and Mr. O'Brien agreed. Mr. Truelove stated Mr. O'Brien used background traffic numbers from Bucks County overall 2.4%, and Mr. O'Brien agreed. Mr. Truelove stated they have already touched on traffic issues affected by population in the Municipality and the region can change depending on population, employment, and other factors; and Mr. O'Brien agreed.

Mr. Truelove asked if Mr. O'Brien is aware that Lower Makefield Township in this area is a commuter area; and people are driving to Philadelphia, New Jersey, and other Municipalities. Mr. VanLuvanee Objected and stated this is beyond the scope of the Remand Order. Mr. Truelove stated this will be covered in the Comprehensive Plan. Mr. VanLuvanee stated if Mr. Truelove feels this is related to the Comprehensive Plan, he will have to explain what relevance he feels it has to the Comprehensive Plan; and Mr. Truelove stated he will do this. Mr. VanLuvanee stated if it is Mr. Truelove's statement that Lower Makefield Township is a "bedroom community," that is Mr. Truelove's testimony and not the Witnesses; and it does not say that in the Comprehensive Plan. Mr. Bamburak stated he agreed with Mr. VanLuvanee on this point.

Mr. Truelove stated two major thoroughfares that are impacted in the study area are I-95 and Route 332, and Mr. O'Brien agreed. Mr. Truelove stated there was prior Testimony on 9/23/08, pages 44 and 45 where Mr. O'Brien stated, "With this site being adjacent to I-95 it certainly makes sense that there are heavy traffic volumes and a lot of traffic traveling between Route 332 and I-95 at both peak hours;" and Mr. O'Brien agreed that this was his Testimony. Mr. Truelove asked Mr. O'Brien if he would agree that traffic on 332 comes from areas well outside one half mile of the proposed site, and Mr. O'Brien agreed. Mr. Truelove stated this is also true for I-95, and Mr. O'Brien agreed.

Mr. Truelove stated the 2.4% background growth he used from PennDOT for Bucks County is really a way of accounting for regional background growth, and Mr. O'Brien stated it is a way to account for the expected growth on the roadways. Mr. Truelove stated this would be in a region in an area; and Mr. O'Brien stated the growth could be from regional developments and local developments, and is meant to account for the traffic growth on the roadways. Mr. Truelove stated Bucks County is a region, and there are regions within Bucks County; and Mr. O'Brien agreed.

Mr. Truelove stated Mr. O'Brien's opinion last time was based upon background growth from PennDOT and his studies which were done 12/07; and Mr. O'Brien stated the study was dated 6/08. Mr. Truelove stated the actual traffic studies themselves on the ground were calculated in December, 2007; and Mr. O'Brien agreed.

Mr. Truelove stated if the growth rate were higher than what Mr. O'Brien had assumed, traffic calculations might change which was also his prior Testimony; and Mr. O'Brien agreed.

Mr. Truelove stated the specifics of the Hospital Plan were that the total square footage of the facility, Hospital and Medical Office Buildings, was 455,000 square feet; and Mr. O'Brien stated he believes so.

Mr. Truelove stated to the best that they can determine most of the staff at this facility would be anticipated to come from the current Falls Township location. Mr. VanLuvanee Objected and stated they are again going over old stuff, and he does not see what this has to do with what they were Remanded for. Mr. Bamburak agreed.

Mr. Truelove asked Mr. O'Brien if he agrees that the proposed Hospital and Medical Facility is a regional facility, and will not just serve Lower Makefield Township. Mr. VanLuvanee Objected and stated this is stuff they have already been over and has nothing to do with the scope of the Remand. Mr. VanLuvanee stated there was an Objection that there was one question that they were not allowed to ask this Witness, and now they are going back over questions that he could have been cross examined on before. Mr. VanLuvanee stated there is no new data that is being shown to him, and they are re-crossing which was not the purpose of the Remand. Mr. VanLuvanee stated the purpose was to allow supplementation of the Record with new testimony or cross examination on very limited matters. He stated if you look at the Motions which were filed there was an Objection made that they were not afforded the opportunity to cross examine Mr. O'Brien with respect to the impact of the Scudders Falls Bridge on his Testimony, and that was it with respect to this Witness.

Mr. Truelove stated the Order did not specify any Witness in terms of the limited scope.

Ms. Kirk asked if there is a way Mr. Truelove can re-word the questions, and Mr. Truelove asked if the Hospital designed to service a region beyond Lower Makefield Township.

Mr. Bamburak stated looking at the Order, they are supposed to be here to supplement the Record. Mr. Bamburak stated they already sat through a lot of discussion as to where the employees would come from and what the customer base would be. He stated they did this already, and this is not supplemental, but is reviewing. He asked that they provide the Board with new information.

Mr. Truelove stated Mr. O'Brien has already indicated that he has not reviewed the Lower Makefield Comprehensive Plan, and he asked Mr. O'Brien if he is aware of the purpose of Comprehensive Plans; and Mr. O'Brien stated generally yes. Mr. Truelove asked as a traffic or transportation engineer has he participated in the development in part of a Comprehensive Plan, and Mr. O'Brien stated he has not.

Mr. Truelove stated part of Mr. O'Brien's task is to submit a report in conformity with the applicable Ordinance, and he asked Mr. O'Brien if he is aware that the Lower Makefield Ordinance requires that the proposed Plan is in accordance with the spirit, purpose, and intent of the Comprehensive Plan. Mr. Truelove stated the Lower Makefield Township Special Exception Ordinance requires that the proposed Plan is "in accordance with the spirit, purpose, and intent of the Lower Makefield Township Comprehensive Plan and in conformance with all applicable requirements of this Chapter (Chapter 178 Subdivision and Land Development)." Mr. O'Brien stated he is not specifically aware of that Ordinance Section.

Mr. Truelove stated in addition to not looking at the Lower Makefield Township Comprehensive Plan, Mr. O'Brien did not look at any Comprehensive Plans from any of the surrounding Municipalities either. Mr. VanLuvanee Objected and stated the Witness told them at the last Hearing that he did not look at the Comprehensive Plan, and he asked why they are doing this. Mr. VanLuvanee stated he has not looked at it since the last Hearing. Mr. VanLuvanee stated if Mr. Truelove wants to argue that Mr. O'Brien had to do this, this is a different issue. Mr. VanLuvanee stated Mr. O'Brien did a traffic study, and he is not a land planner or an engineer; and he told them what he reviewed.

Mr. Truelove stated he will move onto another question.

Mr. Truelove stated he wants to read into the Record part of the Comprehensive Plan for Lower Makefield and then will offer it into evidence. Mr. VanLuvanee stated it is already in evidence as Exhibit T-20. Mr. Truelove noted Exhibit T-20, page vii – Transportation, and read as follows: “The Plan acknowledges the relationship between the transportation network and land use and the need to plan land use, roads, and supplementary means of transportation in concert ...”

Mr. VanLuvanee asked why he is reading this if it is already in the Record.

Ms. Kirk asked if Exhibit T-20 is a copy of the Township’s Comprehensive Plan, and Mr. VanLuvanee stated T-20 was offered on 8/21/09 by Mr. Truelove. Ms. Kirk asked Mr. Truelove if he acknowledges that this was admitted as Exhibit T-20, and Mr. Truelove stated he does. Ms. Kirk asked for the Offer of Proof for reading this Section; and Mr. Truelove stated it is the importance of transportation in the Comprehensive Plan, and part of the “spirit, purpose, and intent” of the Comprehensive Plan is the requirement for review of this process, and transportation is specifically referenced. He stated he would offer I-95 and the Scudders Falls Bridge make it important that this should have been considered in this situation as well.

Mr. VanLuvanee stated this is Argument, and is not supplementation. Mr. Truelove stated he feels he can cross-examine Mr. O’Brien about it, and Ms. Kirk asked if he is cross-examining him as to whether he reviewed it, and Mr. Truelove stated as to reviewing it, and whether he did any of the things that are mentioned. Mr. Bamburak and Mr. VanLuvanee stated Mr. O’Brien already said “no.” Mr. Truelove stated he did not say he did not review some of these things. Mr. VanLuvanee stated they asked him at the last Hearing if he had reviewed any of them, and he said he had not.

Mr. Bamburak asked Mr. O’Brien if he ever reviewed the Township’s Comprehensive Master Plan or any Sections even in passing, and Mr. O’Brien stated he did not.

Mr. Truelove stated he would take it from that, that his questions about transportation issues that are referenced in the Comprehensive Plan, he is not allowed to cross examine Mr. O’Brien about because he did not look at it; and Mr. Bamburak stated he has indicated he did not read the Plan.

Mr. Bamburak stated he would be interested in hearing Testimony that shows how Mr. Truelove can analyze the work that they did that shows that they are not complying with the Plan; and Mr. Truelove stated Mr. Zapalla is here and he indicated that he looked at the Comprehensive Plan so he will ask him those questions.

Mr. Truelove stated Mr. O’Brien indicated he looked at some material for the Scudders Falls Bridge Project since the last Hearing, and Mr. O’Brien agreed. Mr. Truelove asked Mr. O’Brien if he is aware that I-95 from the Scudders Falls Bridge to Route 332 lies entirely within Lower Makefield, and Mr. O’Brien stated he is not sure where the Township boundary is.

Mr. Truelove asked Mr. O'Brien if he is aware that the Scudders Falls Bridge is referenced in the Lower Makefield Township Comprehensive Plan of 2003, and Mr. O'Brien stated he is not aware of this.

Mr. Truelove stated Mr. VanLuvanee has mentioned the Environmental Impact Assessment, and asked Mr. O'Brien if he read any of the Environmental Impact Assessment; and Mr. O'Brien stated he has. Mr. Truelove asked if he reviewed the Summary of the Scudders Falls Bridge EIA, and Mr. O'Brien stated he did.

Ms. Kirk asked when he reviewed this, and Mr. O'Brien stated it was several months ago. Ms. Kirk stated it was not part of his prior review, but in anticipation of the Remand Hearing, and Mr. O'Brien agreed.

Mr. Truelove asked if this document is in evidence, and Mr. Bamburak stated is it not but he can ask questions that tie into #3 of the Judge's Order – traffic in light of the anticipated Scudders Falls Bridge.

Mr. Truelove noted Sub-Section B xii and read, "The I-95 corridor is a major commuter route from destinations in or near the project area as well as for commuters residing in bedroom communities along the route. The project area is within commuting distance to Philadelphia and major nearby employment centers in Bucks and Mercer Counties, the City of Trenton, and even New York City." Mr. Truelove stated it further states, "During the morning and evening peak hours I-95 experiences frequent back ups and delays related to commuters affecting the quality of life for area residents and commuters."

Mr. Truelove stated some of that information is consistent with Mr. O'Brien's recollection at the last Testimony when he indicated that he knew that I-95 was heavily traveled, and Mr. O'Brien agreed.

Mr. Truelove noted the next page xiii which states, "The existing I-95 Scudders Falls Bridge accommodated an average, annual, daily traffic volume of 59,500 vehicles per day in 2003. By the year 2030, the traffic is projected to grow by 29% to an average annual, daily traffic volume of 76,500 vehicles per day. In 2030 the projected future increase in traffic volumes will result in severe congestion in 2030 along an additional two miles of I-95 extending west of the Bridge in the northbound direction in the a.m. peak and an additional five miles extending further west of the Bridge in the southbound direction during the p.m. peak."

Mr. Truelove stated Route 332 and the I-95 Interchange is part of that roadway segment they are referring to, and Mr. O'Brien stated he is not sure how far the 332 interchange is from the Scudders Falls Bridge.

Mr. Truelove asked Mr. O'Brien if he had a chance to review the I-95 Scudders Falls Bridge Traffic Study published in September, 2004; and Mr. O'Brien stated he did.

Ms. Kirk asked if this was previously marked as an Exhibit, and it was noted it was not.

Mr. Truelove noted in the Introduction of that document. Mr. VanLuvanee stated this document says Interstate 95/Scudder Falls Bridge Traffic Study September, 2004 Delaware Valley Regional Planning Commission.

Mr. Truelove noted the Table of Contents and the Introduction on Page 1. Mr. Truelove stated in the Introduction it states, "The study was commenced to evaluate measures to improve safety and relieve congestion on the Scudders Falls Bridge and along Interstate 95 from PA Route 332 (Newtown-Yardley Road in Lower Makefield Township) to Route 579 in Ewing Township, Mercer County, New Jersey," and Mr. O'Brien agreed.

Mr. Truelove stated the point is that the 332/I-95 Interchange is part of that segment they are talking about for the road improvement, and Mr. O'Brien agreed. Mr. Truelove stated it is also part of the study area where the traffic volume is referenced to increase between 2003 and 2030. Mr. O'Brien stated that statement was specifically talking about the volume on the Bridge, and Mr. Truelove agreed; but added the volume on the Bridge has to go somewhere along the road, and Mr. O'Brien agreed.

Mr. Truelove stated in the other document it noted this area serves bedroom communities and talks about employment opportunities so it is a commuter area, and Mr. O'Brien stated he believe so.

Mr. Truelove noted page 5 of the 2004 Study is the heading, "Current Traffic Demand", the third paragraph states, "The I-95/PA332 Interchange serves the most traffic by far of all the interchanges in the study area," and Mr. O'Brien agreed that this is what it states.

Mr. Truelove stated it also states, "Ramp volumes for this interchange total nearly 40,000 vehicles per day and range from 6,700 to 12,100 per day. The highest volumes occur on the northbound off-ramp and southbound on-ramp." Mr. O'Brien stated Mr. Truelove read this correctly. Mr. Truelove stated according to the Scudders Falls Bridge Traffic Study as of 2004 on a busy highway and a busy area on the busy highway, that interchange was the most voluminous in terms of traffic; and Mr. O'Brien agreed. Mr. Truelove stated Mr. O'Brien did not rely on that report for any of his previous testimony. Mr. VanLuvanee asked Mr. Truelove if he is asking Mr. O'Brien whether he relied on this report in lieu of the traffic counts his firms took at the same Interchange, and Mr. Truelove stated he is asking whether Mr. O'Brien actually took it into account at all either in terms of reviewing it to see whether it was consistent with, different from, or modified his opinion based upon the information. Mr. O'Brien stated he was not

specifically aware of this report at the time of his Testimony, but he still believes as he testified to previously that the Scudders Falls Bridge Project should not have been taken into account in their Traffic Study because of the issue as to when that Project would be completed and when the funding of that Project would be determined.

Mr. Truelove stated his questions in that report have nothing to do with whether the Bridge is going to be built, and he just asked Mr. O'Brien about the pure numbers. Mr. O'Brien stated he misunderstood the question. Mr. Truelove stated they talked about traffic volumes that they anticipate, and they do not mention whether the Bridge is built or not. He stated this is just a study to say this is what the volume is now in 2003/2004 and what it is going to be in 2030. Mr. O'Brien stated there is a lot more to the study, but he is correct with regard to what he just read from the study. Mr. Truelove stated he did not ask about the other things because it has to do with whether the Bridge will be built, and he was just asking about the numbers.

Mr. Truelove stated the numbers are what contribute to background growth; and Mr. O'Brien stated he is not sure the numbers contribute to the background growth, and he feels what they are saying is what they anticipate the traffic volume growing to based on the background growth. He stated on the page Mr. Truelove referenced in the report they talk about the traffic volume on the Bridge growing by about 1% a year over the 30 years. He noted in xiii, they say, "By the year 2030 (which is 27 years from 2003) traffic is projected to grow by 29%." Mr. O'Brien stated this equates to about 1% per year, and his traffic growth number included a growth rate of 2.4% per year. Mr. Truelove stated that did not take into account the Scudders Falls Bridge report in addition to that number, and Mr. O'Brien stated it did not.

Mr. Bamburak asked if Mr. O'Brien is trying to say that the 1% from the Bridge is part of the 2.4%, and Mr. O'Brien stated he is saying that the number Mr. Truelove referenced does not talk about any modification to the Bridge Project; and they are just saying that based on current trends, traffic volume on the Bridge is going to grow 29% between 2003 and 2030 whether they make any modifications or not. Mr. O'Brien stated this equates to about 1% increase each year, so he believes that he was more conservative in his Traffic Study since they assumed more than a 1% per year growth and assumed a 2.4% per year growth. Mr. Truelove stated this figure was County-wide, and Mr. O'Brien agreed.

Mr. Truelove stated Mr. O'Brien cannot testify as to whether the 1% in addition per year is over and above any other reasonable growth that could be counted for other traffic conditions as well. Mr. O'Brien stated he knows that the 1% per year, going back to the 9/04 report on page 13, the report details how they completed their traffic forecasting procedures; and they talk about a multi-step, multi-source methodology to produce population and employment forecasts. County forecasts serve as control totals for Municipal forecasts, and Municipal forecasts are based on an analysis of historical data

trends adjusted to account for infrastructure availability, environmental constraints to development, local Zoning policy, and development proposals. Mr. O'Brien stated he believes that this report is a much more detailed evaluation of the background growth than what he did in his small Traffic Impact Study so he believes that this 1% is more reliable than his 2.4%.

Mr. Truelove stated they looked at a lot of other background information that Mr. O'Brien did not look at; and Mr. O'Brien stated he agrees because it was a much larger study than the Traffic Impact Study he did for the single development. Mr. Truelove stated everything in this Study is east of the proposed site, and it did not take into account anything west of the proposed site or south of the proposed site. Mr. O'Brien stated he does not believe Mr. Truelove is correct, and he noted Page 16 of the 9/04 Report where it lists all of the Municipalities that they had looked at going as far west as Langhorne Borough, Langhorne Manor, Lower Southampton, and Pennndel and Tullytown to the south.

Mr. Truelove noted in that report Page 16 shows that the Municipalities with the highest percentage increase are as follows: Lower Makefield 29.4%, Middletown Township 22.3%, Newtown Township 32.2%, Upper Makefield 107.1%, and Wrightstown Township 49.3%; and these are all Municipalities that contribute to the area they are talking about. Mr. O'Brien agreed and added that all this information was put together to result in the background growth rate that they utilized in their report which was about 1% per year. Mr. Truelove stated this is for an area wider than what they are talking about with the proposed Hospital site, and Mr. O'Brien agreed.

Mr. Truelove stated the ones he is talking about – Lower Makefield, Newtown, Upper Makefield, and Wrightstown are all closer in proximity to the subject site; and their percentages are the highest of any Municipality by far; and Mr. O'Brien stated while he agrees, all of that data was incorporated to result in a 1% per year growth rate.

Mr. Truelove asked Mr. O'Brien if he has a copy of a report he sent to Mr. Smolow in January, 2009 in response to the subpoena that was sent to Mr. VanLuvanee. Mr. O'Brien stated he is not specifically aware of what he is referring to, and Mr. Truelove stated it is part of a report developed by Mr. O'Brien and references future volumes without development. Mr. VanLuvanee asked if this Exhibit is in the Record, and Mr. Truelove stated it probably is. Mr. VanLuvanee asked the date, and Mr. Truelove stated this is the information Mr. Smolow requested after some of Mr. O'Brien's prior testimony. Mr. VanLuvanee asked the date, and Mr. Truelove stated it is dated 2/13/09. Mr. VanLuvanee stated the Hearings were still on-going as of that date, and the Hearings did not close until October, 2009; so this is not supplemental information and it was available, according to Mr. Truelove, to the counsel for RAFR at the time the Hearings were ongoing so he objects to this.

Mr. Bamburak asked if this is an Exhibit, and Mr. Truelove stated he believes it is, but he is not sure of the number. Mr. Bamburak called for a break while they determine whether this is in the Record or not.

When the meeting was reconvened, Ms. Kirk asked if it is everyone's anticipation that all of the prior Exhibits entered during the initial Hearings are to be incorporated into this Record. Mr. VanLuvanee stated this Record in his view is just a supplementation of the Record, and the prior Record speaks for itself; and it is a part of the Record in this case. He stated he does not feel they are incorporating by reference, and it is a part of the Record, and this is a supplementation. Ms. Kirk stated the reason she is asking this is if during these Hearings there are going to be references made to prior Exhibits, it would make sense that an Exhibit list should be prepared and submitted to the members of the Board so that when questions are asked as to reviewing certain documents, it is easily available for the Board to reference what document is being referred to.

Mr. Smolow stated the Board in its return should have the most comprehensive list of Exhibits as they should have prepared a list of Exhibits for the Court. Ms. Kirk stated she picked up the Record back from the Prothonotary's Office in May, and it consisted of two sealed boxes in a complete disarray; and she has not had the time to sort through every single piece of paper. Mr. VanLuvanee stated he feels there was a Return File that itemized all the Exhibits; and Mr. Truelove stated he feels that Mr. VanLuvanee has the best list of the Exhibits. Mr. VanLuvanee agreed to send Ms. Kirk a list of the Exhibits which she could distribute to the Board members. Mr. VanLuvanee noted his assumption was that they were going to have new evidence and were not going to go back over the old evidence; but if Ms. Kirk feels she needs it, he will provide it. Ms. Kirk stated she can see that through cross examination there may be questions coming up referring to prior Exhibits.

Mr. Truelove stated the document he was trying to identify was Mr. O'Brien's report marked Exhibit A-6, and he noted the bottom of Page 1 – Executive Summary. Mr. VanLuvanee stated Exhibit A-6 was the Traffic Impact Study for Frankford Hospital prepared by McMahon bearing a date of June, 2008. Mr. Truelove noted the bottom bullet which states, "Future Traffic Volumes Without Development" which states, "To account for future traffic growth the 2007 traffic volumes were increased by an annual traffic growth rate of 2.1% per year. Additionally to account for local traffic growth, traffic associated with one other area of development as identified by Lower Makefield Township was included in the future traffic volume projections," and Mr. O'Brien agreed that this is what it says. Mr. Truelove stated Mr. O'Brien took background growth, but he also took some local contribution; and Mr. O'Brien agreed. Mr. Truelove stated he did not take any contribution from Newtown Township or any other surrounding Municipalities or any other developments in Lower Makefield, and Mr. O'Brien stated specifically he did not.

Mr. Truelove noted Mr. O'Brien's testimony of 10/21/08, page 37. Mr. Truelove stated one of the Remand Order categories is the impact of proposed Aria Hospital/Medical Office Building on traffic volume and congestion taking into consideration anticipated traffic from pending Newtown Township development. Mr. Truelove noted on page 37 the different developments in Newtown Township that were within two miles of the location which included the Regency at Upper Makefield, 90 homes, the Melsky Tract on Stoopville Road, 90 homes, the White Tract on Stoopville Road, 80 homes, and Route 532 the Veterans' Administration Cemetery which has been built and is operating.

Mr. VanLuvanee stated he objects to Mr. Truelove reading the Record as he obviously got to ask this question, and it was answered. He stated this is not supplementation again. He stated if Mr. Truelove wants to offer someone's testimony who says that some of this is relevant, he feels this would be within the scope of the Remand; but to ask the Witness again what he already answered which was that he did not take this into consideration, is not within the scope of the Remand. He stated this is a question that Mr. Truelove got to ask already.

Mr. Truelove asked Mr. O'Brien if since that time has he looked at any of these developments and taken them into consideration, and Mr. O'Brien stated he has not.

Mr. Truelove stated Mr. O'Brien's report had one Lower Makefield Township development that he did take into account for impact on the site, and Mr. O'Brien agreed. Mr. Truelove asked Mr. O'Brien if it is his opinion that these other sites within two miles and in Newtown Township do not have any impact on the traffic at the site in question.

Mr. VanLuvanee stated he objects as Mr. Truelove had the opportunity to ask that question at the last Hearing, and there was no Objection to that. Mr. Truelove stated Mr. VanLuvanee is saying that the Order says he can ask these questions, but Mr. VanLuvanee is going to Object because he did not ask them the first time. Mr. VanLuvanee stated the Order does not say he can ask the questions. Mr. VanLuvanee stated the Order says that they are to be given an opportunity to supplement the Record with respect to very narrow subject matter, and it does not say that they get to cross examine his Witnesses again. Mr. VanLuvanee stated it also says in the Supplemental Order that the Court entered that how this Record is to be supplemented is an issue for the Zoning Hearing Board.

Mr. Bamburak asked that Mr. O'Brien answer the question, and Mr. Truelove asked Mr. O'Brien if it is his opinion that all those developments he referenced in 2008, have no impact on traffic at the study area; and Mr. O'Brien stated this is not his opinion. Mr. O'Brien stated his opinion is that developments in the area certainly will have an impact on the roads in the study area, and it all depends on the size of each development and the location of each development on how much impact they will actually have on the

study area. Mr. Truelove stated Mr. O'Brien has not performed a study to take any of those into account or what the impact may be from those specific developments, and Mr. O'Brien agreed.

Mr. Truelove stated McMahon has performed prior studies of other projects within one half mile of this area in the past. Mr. VanLuvanee stated that was asked and answered during the original Hearing. Mr. Bamburak stated they are only interested in this project. Mr. Truelove stated while he understands this, he feels credibility is an important issue. He asked to be able to make an Offer of Proof. Mr. Truelove stated there were two studies one done in 1998 called, "Alternative Analysis Study O/R (Office/Research) Zoning District for Newtown Township and Lower Makefield Township;" and this included a study area that reviewed development proposed and existing from 1997 to 2007 and took into account developments in Lower Makefield, Newtown Township, Middletown Township, and Newtown Borough. He stated it also considered twenty-two intersections in that area and discussed Levels of Service for Newtown-Yardley Road and Route 332, and Route 332 and Stony Hill Road all of which were LOS F in 1998. Mr. Truelove stated there were recommendations for traffic improvements at that time which he would submit were not followed.

Mr. Truelove stated the point of the cross examination would be a much more extensive traffic study was done including developments from contributing Townships and Municipalities at that time that McMahon did, but they did not do it this time; and he feels it is a credibility issue as to the value of their opinion in this case.

Mr. VanLuvanee stated his recollection, and he feels the Record will reflect this, is that that Study might actually be a part of the Record and was certainly something that Mr. Truelove knew about at the time and he believe he cross examined the Witness about it; and he does not see how this supplements. Mr. VanLuvanee stated it suggests that he feels he should have done a better job of cross examination, but that really was not Judge Fritsch's Order. Mr. VanLuvanee stated they are not here to go back over all the testimony that everyone made three years ago; and they are here to supplement the Record on a very narrow information; and you do not supplement a Record with cross examination unless it is with respect to the areas where these gentlemen contended they were deprived of the right to cross examine. Mr. VanLuvanee stated he would suggest that Mr. Truelove is not going to be able to show the Board a point in the Record where an Objection to a question he asked about this McMahon study was sustained by the Board.

Mr. Truelove stated he was not allowed last time nor was Mr. Smolow or Mr. Koopman to ask questions about Newtown Township developments, and this is why the Remand Order was worded the way it was. Mr. Truelove stated he would have asked those questions, and perhaps he was remiss for not doing so although he is sure that there would have been an Objection that would have been sustained, that there were all these

developments that were referenced before and he was going to go through them one by one because it showed that at the time in 1998, McMahon has the presence of mind to go through that type of analysis and did not do that this time; and therefore the report this time is deficient.

Mr. VanLuvanee stated the Objections that were sustained were to Mr. VanLuvanee's Objections to Mr. Truelove's witness who was trying to bring the evidence in and not to Mr. Truelove's questioning of Mr. O'Brien. Mr. VanLuvanee stated Mr. O'Brien told them he did not consider them; and while he did in other cases, he did not in this one.

Mr. Bamburak agreed with Mr. VanLuvanee and Mr. O'Brien did not consider it, and Mr. Truelove will have to figure out a way to get it into consideration.

Mr. VanLuvanee stated the only thing the Witness said was that in his opinion it was covered by his background growth, and he did not feel he had to go specifically; and he feels the Record would support this.

Mr. Truelove stated his other Offer of Proof would be a 1999 study done for a 100,000 square foot building at the corner of Lindenhurst Road and Newtown-Yardley Road also known as Route 332 and Newtown By-Pass, and they looked at eleven other developments to be included in addition to the background growth; and that Study is in the Record. Mr. Truelove stated he did not ask questions last time because he believes he was precluded from asking questions about Newtown Township developments, and this Order allows him to do that. Mr. Truelove stated he would submit that for a building that is 22% the size of the proposed site and was another McMahon study where the background growth was utilized for local developments is again a credibility issue, and Mr. O'Brien just admitted that Newtown Township developments do contribute to traffic impact although he never testified to that before and it is not in any report he ever authored; and in fact, he indicated that he did not see any need to do so.

Mr. VanLuvanee stated the Record speaks for itself, but what Mr. O'Brien said was it was taken into consideration as part of background traffic growth. Mr. VanLuvanee stated the Board may want to consider some new evidence that is presented that may take issue with that. Mr. VanLuvanee stated Mr. Truelove also had a chance to bring a traffic expert in, and he chose not to do that. Mr. VanLuvanee stated Mr. Truelove also said that the 1999 study was in the Record; and if it is in the Record, Mr. Truelove obviously had an opportunity to cross examine, and he would suggest that he tell the Board where he was denied the opportunity to ask those questions if he feels that he should now be given this opportunity. Mr. VanLuvanee stated he recalls that it is not in the Record.

Ms. Kirk asked Mr. O'Brien if he considered either of those two Traffic Studies when he completed his Traffic Study for this site; and Mr. O'Brien stated he was aware of the O/R Study but that is not really a Traffic Impact Study, and they had been hired by two or three Municipalities at the time to help them determine the traffic impact of re-zoning a very large tract of area so it is not exactly the same as a Traffic Impact Study for a specific development; and he was not specifically aware of the other development Mr. Truelove is referring to.

Mr. Bamburak stated it seems to him that Mr. Truelove is trying to prove that the previous Study was defective. Mr. Bamburak stated apparently the Judge agreed which is why they are back here, and he asked that Mr. Truelove move on to providing the data. Mr. Truelove stated he would be glad to put it in the Record, and if Mr. VanLuvanee said the 1998 Study is in the Record but the 1999 Study is not, he will then submit the 1999 study and ask that it be entered into the Record.

Mr. VanLuvanee stated this was not the point, and the point was that something that existed in 1998 or 1999 was clearly available to Mr. Truelove at the time of the Hearing and it is not supplementation of the Record and it has nothing to do with Newtown Township data and is not opinion testimony. Mr. VanLuvanee stated Mr. Truelove is basically saying he wishes he could have cross examined a little more, and that is not what they are here for.

Mr. Truelove stated this is not what he is saying, and the Remand Order says that any attorney can ask questions about taking into consideration anticipated traffic from pending Newtown Township development; and his point is that McMahan, the company that Mr. O'Brien works for, had prior studies of traffic within a half mile of this area where they did certain type of studies and took into account developments and other information that they believe contributed to traffic in this area. Mr. Truelove stated this particular intersection was mentioned specifically both times as a very troublesome intersection in terms of its Level of Service back in 1998 and 1999. Mr. Truelove stated the numbers speak for themselves, and they recognized the developments from outlying areas contributed to that traffic volume and the congestion; and the problems existed then, and they made some recommendations. Mr. Truelove stated it may be a Traffic Study for an O/R District, but it is still a Traffic Study that looks at the same data and the same information, and comes to certain conclusions about intersections and about traffic; and that is what they are here to talk about.

Mr. VanLuvanee stated they are not here to talk about traffic, but are here to talk about the impact of this project on traffic volume and congestion taking into consideration anticipated traffic from pending Newtown Township developments. Mr. Bamburak stated this sounds like talking about traffic. Mr. VanLuvanee stated Mr. Truelove is talking about a Report. Mr. VanLuvanee stated Mr. O'Brien told the Board the last time that he took Newtown Township traffic into consideration in a general sense because it

was part of his background growth, and he has said it again today. Mr. VanLuvanee stated if someone is going to suggest that his background growth rate is too low and if you added Newtown Township traffic to it or specific projects perhaps his background growth rate was not high enough, and would have skewed his figures, that is not for Mr. O'Brien to say, and it is for some other person to tell them.

Mr. Bamburak stated Mr. Truelove has made an argument before the Board that there was a lot of other information that Mr. O'Brien did not include which he feels should have been included, and he feels it will be up to the Board at this point whether they feel the previous Study was defective, and whether they can believe it or not. Mr. O'Brien has already said he did not consider these other things.

Mr. Truelove stated his point is that McMahan is an engineering firm, and Mr. O'Brien indicated that he represents McMahan; so he feels there is a credibility issue then if professionally in one project in almost the same location they employ a different methodology than what they employed here; and he feels this would indicate that even by their own admission passively, their numbers are skewed.

Mr. DosSantos stated this would only be if it were an “apples to apples” project since the one project he talked about was a completely different Study. Mr. Truelove stated the other one he has which he would like to submit into evidence is a Newtown Office development at what was called the ITE Building and is now the Waste Management Building, and he would submit that it is an admission by an expert. He stated they do this all the time in litigation; and if someone submits a prior report, you are able to cross examine as it is all about credibility.

Mr. VanLuvanee asked why Mr. Truelove did not use this before if he had the Report. Mr. VanLuvanee stated the Record will reflect that Mr. Truelove did not try to ask any questions about that Report; and if he had, the Board would probably have allowed it.

Mr. Truelove stated he is allowed to supplement the Record taking into consideration anticipated traffic from pending Newtown Township developments. Mr. VanLuvanee stated he should then supplement the Record. Mr. Truelove moved for the admission of the Report as an Exhibit. Mr. VanLuvanee stated if it is already in the Record, he does not have to move to supplement it.

Mr. Smolow urged the Board to err on the side of receiving evidence and documents so that there is not a problem if this Case goes back up to Court where there will be an issue that the Board should have received evidence that they did not receive. He stated this can do no harm if the Board receives evidence, and he feels there would be great risk if the Board says no to a document or no to testimony.

Mr. Bamburak stated the Board's counsel, Ms. Kirk, has advised that it is probably safer to err on the side of caution, and to allow the Traffic Report which Mr. Truelove is currently referencing into the Record.

Mr. VanLuvanee stated he Objects to the Offer of the Report since they do not even know what it is. He stated he cannot Offer a Report without identifying it and proving what it is.

Ms. Kirk stated she is not suggesting that the document in and of itself be admitted into Evidence, but she is suggesting that the Board permit Mr. Truelove to ask the questions of Mr. O'Brien relative to those two Reports, and the Board can then make its own determination as to whether or not the answers are applicable as to supplementation of the Record or if it affects Mr. O'Brien's credibility in any way. Ms. Kirk stated he can ask the questions, but not admit the Reports.

Mr. VanLuvanee stated while he respects the ruling, he would ask the Board that when they consider this evidence to consider the fact that this is not supplementation and is an area that Mr. Truelove had clear ability to have cross examined on in 2008 and 2009. Ms. Kirk stated she believes the Board clearly understands that Mr. VanLuvanee's view of the Remand Hearing as to the limitations as he interprets the Judge's Order, and that he is Objecting to "having a second bite of the apple;" but the Board will make the determination as to whether or not ultimately it is relevant or not.

Mr. Truelove provided Mr. O'Brien a copy of the report he has been referencing.

Ms. Kirk asked Mr. Truelove how much longer he anticipates going on. Mr. Truelove stated this is the last area he will be cross examining Mr. O'Brien on, but he assumes Mr. Smolow will want to cross examine Mr. O'Brien and possibly Mr. Koopman.

Mr. Bamburak stated in the original case, someone came in from Newtown Township to testify as to the developments; and the initial person who came in was from Building, and they said this did not count since she was not in Planning. He stated the next person that came in was someone from Planning who testified the same thing as to the developments which were being built so they did hear a lot of what was going on in Newtown.

Mr. Truelove stated it is true that this is in the Record, but his point is that this is also the same type of information McMahan did rely on in prior studies. Mr. Bamburak stated they did hear testimony that there was development in Newtown Township.

Mr. DosSantos stated the question is whether or not Mr. O'Brien took that into consideration. Mr. Truelove agreed and stated if he did not take it into consideration, he feels they have the right to ask questions as to why the same company took it into consideration when they did the other study.

Mr. VanLuvanee stated the Chairman is correct in that the evidence of Newtown Township development was offered, but it was not followed up with an expert; and now they want another chance to do what they should have done the first time. Mr. Bamburak stated he agrees there were some limits placed on the Testimony, but he does recall the two individuals from Newtown testifying. Mr. VanLuvanee stated he recalls that there were two questions that were Objected to; but ultimately all of the development information came in. He added that what did not come in because it was not offered was an opinion from a traffic engineer that indicated it was relevant to the Board.

Mr. Truelove noted the document provided to Mr. O'Brien entitled, "Traffic Impact Study for the Newtown Office Development" prepared for Brandywine Realty Trust 4/99 by McMahan Associates Inc. which is Mr. O'Brien's company; and Mr. O'Brien agreed. Mr. Truelove stated Mr. O'Brien was actually working for McMahan at the time of this Report, and Mr. O'Brien agreed. Mr. Truelove stated the Brandywine Trust Building they are referencing is the building at the corner of Lindenhurst and Route 332, and Mr. O'Brien stated he believes so. Mr. Truelove stated this would be visible from the proposed Aria site, and Mr. O'Brien stated he is not certain. Mr. Truelove stated the corner of Lindenhurst and 332 is within a half mile so it is within the Study area, and Mr. O'Brien stated he believes so.

Mr. VanLuvanee Objected. He stated Exhibit A-24 in the Record is the Traffic Impact Study requirements from the Subdivision and Land Development Ordinance, and the term "Study Area" is defined as follows: "The area will extend along all arterial and collector access roads serving the development to the nearest Township boundary line." Mr. Bamburak stated he recalls this as well but apparently the Judge is telling them that this is defective. Mr. VanLuvanee stated the Judge did not say this, and he said that he would give them the opportunity to supplement the Record, and the opportunity to the Zoning Hearing Board to determine what is relevant. He stated the Judge has not made a ruling on this case, and he has not said it is relevant and he has not said it is not relevant.

Mr. Truelove stated Lindenhurst Road is the western terminus of the Township. He stated Mr. O'Brien has already stated that Newtown Township developments do contribute to traffic so he feels he can ask these questions, and it is relevant.

Mr. VanLuvanee stated this was not the basis of his Objection. He stated Mr. Truelove used the term "Study Area," and said this development was within the Study Area, and it is not within the Study Area because it is in Newtown Township.

Mr. Truelove stated the intersection bordering this development is in the Study Area, and Mr. VanLuvanee agreed.

Mr. Truelove referred back to the document in the Executive Summary, page 1, second bullet reads, "To develop future opening year of 2000 traffic additions without the proposed development 'background' traffic growth rate of 2.5% per year was applied to existing traffic volumes. In addition traffic to be generated by eleven other local developments in Newtown and Lower Makefield Townships was estimated to contribute to background traffic growth."

Mr. VanLuvanee stated at one of the last Hearings, either Mr. VanLuvanee or Mr. Smolow attempted to introduce evidence of what Newtown Township defined as their Study Area which was a different definition; and he recalls it was a definition of a radius of the project which would include other Townships. Mr. VanLuvanee stated Mr. Truelove is trying to ask a "trick" question. He stated narrow questions are fine, but he feels these are misleading.

Mr. DosSantos asked if this is an "apples to apples study" as to what they are talking about as he feels a foundation on that needs to be made before they can make any determination. Mr. Truelove stated Mr. O'Brien has already testified that Newtown Township developments do contribute to traffic. Mr. Truelove stated they could not have "apples to apples" because two developments are never identically the same. Mr. DosSantos stated obviously the developments are not the same but with regard to the other study from Newtown Township from 1998, Mr. O'Brien had indicated that it was not a Traffic Impact Study. Mr. Truelove stated he does not agree with that statement as it was a Traffic Study that measured traffic impact on the area. Mr. VanLuvanee stated Mr. O'Brien was discussing the O/R Study and not the Study that Mr. Truelove is discussing now.

Mr. Truelove stated the Study Area definition from the Lower Makefield Township Subdivision and Land Development Ordinance which he referenced earlier in the Hearing tonight states, "This area will extend along all arterial and collector access roads serving the development to the nearest Township boundary line and shall in any event extend to all intersections along all roads within a one half airline mile area." Mr. Truelove stated this does not say that it is limited to the boundary, and if it is beyond a half mile you take it into account regardless of whether it is the Township boundary or not. Mr. VanLuvanee stated this is true for the intersections, and this intersection was studied. He stated the issue is how the projects are relevant and not whether the intersection is.

Mr. Bamburak stated it was previously noted that all these developments were not within the one half mile, and this is why they were excluded. He stated even though the Judge did not say this in his words, he feels that they are back here and will have to consider what the projects are. Mr. VanLuvanee stated the Board has to determine whether those projects are relevant in any sense beyond what Mr. O'Brien's conclusions are as to relevance.

Mr. Truelove noted Page 3 Introduction for background it references the 1998 Study that is in evidence, and Mr. O'Brien agreed. Mr. VanLuvanee stated the Record will speak for itself, and his recollection is that it was in Evidence; and Ms. Kirk stated they will satisfy that question when they have the list of Exhibits.

Mr. Truelove noted Page 15 where it reads, "The intersection of Yardley-Newtown Road (PA Route 332/Stony Hill Road) currently operates at overall LOS (Level of Service) F during both weekday morning and afternoon peak hours," and Mr. O'Brien agreed.

Mr. VanLuvanee asked what this has to do with Newtown Township traffic. He stated this does not go to the issue. He stated the Traffic Impact Study that was submitted before said that intersection was Level of Service F; and Mr. Truelove agreed, and stated his point is that if you look at the rest of the Study, it indicates recommendations for road improvements that were not undertaken and also talks about the contribution of developments from a wider scope and from a good traffic engineering perspective has an impact on this area and should have been taken into account in the initial report from McMahon in this case. Mr. VanLuvanee stated that has nothing to do with the impact of the proposed Aria Hospital/Medical Office Building taking into consideration traffic from pending Newtown Township developments. He stated the Hospital project is never mentioned in the Study since it was from 1999.

Mr. DosSantos stated with regard to a credibility issue of the Witness as to whether or not his firm took into account a wider scope than what they took into account for the Aria study. Mr. VanLuvanee stated if they consider this to be relevant, that is correct. He stated right now it has not been made relevant because they do not know what the Newtown Township scope was because Mr. Truelove has not offered it. Mr. Truelove stated he does not believe he has to offer that because it is an engineering issue, and he will follow it up at a later Hearing with other engineering testimony about that; and also they have already talked about background growth, and this does have an impact literally on background growth. He stated if the numbers for background growth are inaccurate because certain developments in other areas were not taken into account, and they only took into account Lower Makefield in addition to the general background growth, he would submit that the door has been opened on that. Mr. VanLuvanee stated if it has been opened it has been opened by Mr. Truelove.

Ms. Kirk asked Mr. O'Brien if he had reviewed the 1999 Traffic Impact Study what effect if any would that have on his calculation of background growth for his initial Traffic Study for the Aria Hospital project. Mr. O'Brien stated it would not have any. He stated the 1999 Study was done for a development in Newtown Township following the Ordinance requirements of Newtown Township. He stated for the Study for the Aria Health project, they followed the Ordinance requirements for Lower Makefield and accounted for the 2.4% background growth for two years to provide an opening year

evaluation in addition to adding the specific development within the Study Area. He stated in addition they also looked at a ten-year build which accounted for 2.4% growth from 1997 to 2019 which accounted for an overall growth rate of more than 30%. He stated he believes that their Study more than adequately provides a conservative assumption of the background growth rate for the Township to review.

Ms. Kirk stated it is therefore Mr. O'Brien's opinion that the recommendations offered in the 1999 report would not have impacted the ultimate results of his Traffic Impact Study, and Mr. O'Brien agreed.

Mr. Truelove stated Mr. O'Brien did not use the methodology for traffic impact of surrounding developments in Newtown Township in his study that was done for Aria; and Mr. O'Brien stated he believes they accounted for the developments in accordance with the Township Ordinance requirements. Mr. Truelove stated Mr. O'Brien did not look at specific developments and their traffic impact on the intersection at Stony Hill Road and Route 332, and Mr. O'Brien stated he looked at the developments that were proposed within the Study Area in Lower Makefield Township. Mr. Truelove stated he looked at one development, and Mr. O'Brien stated this was based on information that they got from the Township. Mr. Truelove stated this was from the Township's Website, and Mr. O'Brien agreed. Mr. Truelove stated he never contacted the Township engineer, and Mr. O'Brien stated they were directed to the Township's Website from the Township's Code Enforcement Officer at the time. Mr. Truelove stated as an engineer he relied on the Code Enforcement Officer to provide him with information about Township developments, and Mr. O'Brien agreed.

Mr. VanLuvanee stated in the Exhibit – Traffic Study Requirements – it states, "Where doubt exists a transportation engineer shall seek guidance from the Township Manager" and it does not state it should be from the Township engineer. Ms. Kirk stated this is part of Argument that he will make in his final Briefs.

Mr. Truelove stated Mr. O'Brien looked at the Traffic Impact Study Requirements for the Township, and Mr. O'Brien agreed. Mr. Truelove noted the last Section, Section 7 – Conclusions and Recommended Approval – it reads, "Levels of Service for all roadways and intersections shall be listed. All roadways and/or intersections showing a Level of Service below C shall be considered deficient and specific recommendations for the elimination of these problems shall be listed unless design limitations preclude obtaining Level of Service C. Where such conditions exist, the traffic engineer shall seek guidance from the Township prior to the submission of the Traffic Impact Study." Mr. Truelove stated as he recalls, even with the proposed improvements for Aria during the peak hours the intersection of Stony Hill Road and Route 332 does not obtain a Level of Service C.

Mr. VanLuvanee objected and stated this is again not within the scope of the Remand. He stated this evidence was all in the Record before. Mr. Truelove stated this is a credibility issue, and Mr. VanLuvanee stated this is not a credibility issue – it is a statement, and the Traffic Impact Study speaks for itself. He stated Mr. Truelove had ample opportunity to go through all of this and this has nothing to do with the subject matter of the Remand. He stated if they do not control the scope of the examination, they will be here another two years. He stated this is not supplementation of the Record.

Mr. Bamburak asked Mr. O'Brien to answer this one question from Mr. Truelove. Mr. Truelove stated the question is that even with the improvements proposed at the intersection of Stony Hill Road and Route 332, during the peak hours a Level of Service C is not obtained according to his Study; and Mr. O'Brien stated there are movements that will operate below Level of Service C but the recommendations they provide do mitigate the impact other than that. Mr. Truelove stated they do not obtain a Level of Service C, and Mr. O'Brien agreed.

Mr. Bamburak stated this was previously in the Record so Mr. VanLuvanee is correct, and they are just rehashing old testimony. Mr. Bamburak stated he understands the point being made about credibility where he is saying this Traffic Study was defective compared to the one performed for a project down the road, and it is the Newtown development they did not consider; and if this were Newtown, they probably would have considered equivalent development in Lower Makefield. He asked that they have testimony from Mr. Truelove's traffic engineer; and while previously they were not able to bring in anything past the Township border, now that he can use the Newtown information he could present this as it relates to Number 3 in the Judge's Order. Mr. Bamburak stated Mr. Truelove is telling them that Mr. O'Brien did not do a good job, and Mr. O'Brien is saying he did a good job within the specifications that were laid out. Mr. Truelove stated he does not feel he did that because when the Levels of Service is below C, he should seek guidance; and the guidance might include looking at developments outside of a one half mile radius. Ms. Kirk stated this would be the purpose or presenting a Witness to rebut.

Mr. Bamburak stated the point has been made that Mr. Truelove does not like Mr. O'Brien's study or feel that he did a good job, and the Board understands this. Mr. O'Brien is indicating that in his opinion he used all the appropriate parameters and did a good Study and has indicated that he has provided mitigating factors that he is comfortable with as a professional. Mr. Bamburak stated he feels they should move on and they will give some leeway to allow some of the Newtown information which Mr. Truelove's traffic engineer will present, and this will be supplementing the Record. He stated simply reading the Record is not supplemental.

Mr. Truelove stated he only brought this up because Mr. O'Brien stated he complied with the Ordinance, and Mr. Truelove stated his argument is that he did not.

Mr. Truelove asked that the Traffic Impact Study of 1999 be moved into Evidence. Mr. Bamburak stated they are not admitting this into Evidence upon the advice of Counsel. Mr. Truelove asked the Record to reflect his exception to that Ruling. Ms. Kirk stated the document is not being precluded from being used by any other Witness during the course of his or her testimony.

Ms. Kirk asked how long Mr. Smolow anticipates having questions for Mr. O'Brien. She stated in her discussions with the Board in understanding the basis for the Remand Hearing, she did not envision that they would have extended cross examination of Mr. O'Brien, but rather that the Township and Mr. Smolow would present other evidence through other Witnesses that would Supplement the Record with respect to the traffic issue as opposed to what Mr. O'Brien testified or prepared.

Mr. Smolow stated he does have an expert Witness; however, he does intend to cross examine Mr. O'Brien and his cross examination will focus on the I-95 southbound ramp onto 332 which is the ramp that carries traffic from the Scudders Falls Bridge; and he intends to ask Mr. O'Brien questions about that ramp because it impacts his 2007 Report as well as bears on the ultimate question.

Mr. Bamburak stated Mr. Smolow is trying to again establish what Mr. Truelove already tried to establish. Mr. Bamburak stated the Board wants to hear new information and they understand that they feel the report may be defective. Mr. Smolow stated he is going to do his best to show that it is defective in additional ways. Ms. Kirk stated the Board does not need Mr. Smolow to show this as Mr. O'Brien has already indicated in his testimony that he did not consider at the time of preparing his report Newtown Township development and he focused on one development and used calculations based on a background growth that he calculate, and he has not looked at any of the documentation as part of providing an updated report. Ms. Kirk stated Mr. Smolow is asking the same questions, and Mr. O'Brien's answers are going to be that he did not consider any of that.

Mr. DosSantos stated the Board would like to hear from another Witness to tell them that this should have been considered.

Mr. Smolow stated he knows the Judge gave them permission to cross examine Witnesses, and he has not had an opportunity to cross examine anyone. Mr. Bamburak asked if the Order says this, and Ms. Kirk stated the Order says "the Supplementation Evidence may be presented either through cross examination of previous Witnesses or the calling of new Witnesses is within the discretion of the Lower Makefield Township Zoning Hearing Board." Ms. Kirk stated the Board is saying, after Mr. Truelove's cross examination of Mr. O'Brien, that Mr. O'Brien's testimony is not going to provide any new information.

Mr. Smolow stated he has different questions. Mr. Bamburak stated the key words are “within the discretion of the Lower Makefield Township Zoning Hearing Board.”

Mr. Smolow stated he has different questions, and he would like to be able to ask his questions. He stated he does not intend to repeat what Mr. Truelove asked.

Mr. Koopman stated it is clear from the Remand Order and the Clarification of that, that one of the issues is going to be cross examination of Mr. O’Brien. He stated Mr. Truelove had the opportunity to cross examine, and he feels the Board would be remiss if they do not allow Mr. Smolow some leeway in terms of cross examining about issues that were not the subject of Mr. Truelove’s examination, otherwise he is concerned they will be back before the Board again on a Remand. He stated he feels the Board would be remiss if they did not allow Mr. Smolow the opportunity to have some cross examination of Mr. O’Brien on issues that pertain to the Scudders Falls Bridge project and traffic in Newtown Township. He stated the Order and the Supplement to the Order indicate that this is proper, although how this is going to happen is at the discretion of the Zoning Hearing Board.

Ms. Kirk stated she is not disputing the cross examination of Witnesses, but she was asking Mr. Smolow if his questions in cross examination were going to cover the same material that Mr. Truelove has already covered. Mr. Koopman stated Mr. Smolow indicated that it would not.

Mr. Smolow made additional comments as to what he will discuss. He stated he feels the Board in their prior action was too restrictive. He stated the Judge pointed out three areas where the Board was too restrictive. He stated the Court rejected Mr. VanLuvanee’s argument. Mr. Bamburak stated the Board is going to give Mr. Smolow the time to enter new information.

Mr. VanLuvanee stated the Court did not determine the Board committed an error, but rather the Court determined that in order to give full consideration to the Appeal and the issues that were raised, the Township and Mr. Smolow should be given the opportunity to supplement the Record. He stated the Court did not make any Findings or any Rulings, or indicate that the Board abused its discretion. He stated it did not even say that the Board erred by limiting the scope. He stated what it says is so that they do not have that issue going up as an Appeal issue, they will allow the Record to be supplemented.

Mr. Koopman stated one way you supplement the Record is through cross examination.

Ms. Kirk stated she wants to make sure they are not going to have cross examination of a rehash of what was just cross examination. Mr. Bamburak stated they will give Mr. Smolow a little bit of leeway, but if it is going to questions of Mr. O’Brien about why he did not do certain things, they have already heard this.

Mr. Smolow stated he does not intend to ask Mr. O'Brien about Newtown Township nor does he intend to ask about the Comprehensive Plan.

Mr. VanLuvanee stated his client is paying to have Mr. O'Brien here, and they have been waiting five months for this Hearing while Mr. Smolow and Mr. Truelove went to Court over an issue that he does not feel should have been an issue; and it turned out to be virtually nothing based on what has been produced. He stated he does not want to have to pay Mr. O'Brien to come back again.

Mr. Smolow noted the southbound ramp from I-95 that connects I-95 onto 332 which connects to the Scudders Falls Bridge traffic with 332, and Mr. O'Brien stated it would be I-95 traffic to 332. Mr. Smolow stated the traffic from Scudders Falls Bridge comes off 95 and may go to 332; and Mr. O'Brien agreed. Mr. Smolow stated the Scudders Falls Bridge is located approximately three miles from Route 332, and Mr. O'Brien stated he believes so. Mr. Smolow asked Mr. O'Brien to describe the Interchange on the southbound ramp, and Mr. O'Brien stated that quadrant of the interchange is a diamond interchange in that people come straight off the ramp and come up to the light at 332. Mr. Smolow stated in addition to the light at 332, there is a lane that takes traffic westbound onto 332, and Mr. O'Brien agreed. Mr. Smolow stated the westbound traffic is not controlled and there is a yield sign, and Mr. O'Brien agreed.

Mr. Smolow stated the proposed Hospital is located approximately one third of a mile from the terminus of the ramp and 332, and Mr. O'Brien stated he has not measured it although that does seem reasonable. Mr. Smolow stated between the ramp and Stony Hill Road there are no intersection crossroads on 332, and Mr. O'Brien agreed.

Mr. Smolow stated based on Mr. O'Brien's 2007 Report he included a description of Levels of Service in Appendix E, and he believes that he describes a different schedule of service for unsignalized intersections versus signalized intersections; and Mr. O'Brien agreed. Mr. Smolow stated the lane that takes traffic off of the I-95 ramp and heads westbound is an unsignalized lane, and Mr. O'Brien agreed. Mr. Smolow stated for that lane a Level of Service D would be for traffic delays between 25.1 seconds and 35 seconds, Level of Service E would be very long delays of 35 to 50 seconds, and F would be where demand exceeds the capacity of the lane, and Mr. O'Brien agreed.

Mr. Smolow asked Mr. O'Brien if he is familiar with the current Levels of Service on the ramp. Mr. VanLuvanee asked "current" as of what date, and Mr. Smolow stated he would mean today in 2011. Mr. O'Brien stated he is familiar with the operation of the intersection. Mr. Smolow asked if this is based upon his professional experience, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien if he is familiar with the operation of the intersection during the a.m. and p.m. peak hours during the week days, and Mr. O'Brien stated he is. Mr. Smolow asked Mr. O'Brien if he would agree with him that the current operation of the ramp in the weekday afternoon peak hour is Level of

Service D or worse; and Mr. O'Brien stated he is aware that there is difficulty turning right from the ramp onto 332 which results in delays. Mr. Smolow asked if those delays cause queuing, and Mr. O'Brien stated there is queuing. Mr. Smolow stated the queuing issues extend traffic on that ramp sometimes back to I-95, and Mr. O'Brien agreed. Mr. Smolow stated when this happens that causes a hazardous condition to exist on I-95.

Mr. VanLuvanee Objected adding he has waited for about ten questions, and he has not heard anything about the Scudders Falls Bridge Project. Mr. Bamburak stated he did not indicate that he was necessarily going to start with that. Mr. VanLuvanee stated that is the only thing that is relevant – the impact of the proposed Hospital/Medical Office.

Mr. Bamburak stated he is going to allow Mr. Smolow to continue.

Mr. Smolow asked Mr. O'Brien if he would agree with him that when traffic queues and backs up into I-95 it creates a potentially hazardous condition, and Mr. O'Brien agreed. Mr. Smolow stated that condition exists at the present time, and Mr. O'Brien agreed. Mr. Smolow stated this condition exists in the weekday p.m. peak hours, and Mr. O'Brien stated this is true at times.

Mr. Smolow noted Mr. O'Brien's 2008 Report where he addressed this ramp in the Traffic Study. Mr. Smolow noted Figure 14 of Mr. O'Brien's Report which shows the Levels of Service for the ramp; and he indicated that the Level of Service was A in the evening peak hours, and Mr. O'Brien agreed. Mr. Smolow asked if the Level of Service has fallen from 2007 to today from Level of Service A to the queuing condition that we have today. Mr. O'Brien stated Level of Service A was based on analysis where they treated the right-turn lane as being part of the signalized intersection, and in hindsight, they should have treated that separately as a right-turn yield-controlled intersection. Mr. Smolow asked if he is saying that he did not show the Level of Service of the ramp itself in the 2007 Study; and Mr. O'Brien stated this is not what he is saying. Mr. O'Brien stated he is saying that when they did the Study they analyzed the right turn movement as being part of the signalized intersection, and in hindsight they should have treated that as a yield-controlled movement. Mr. Smolow stated in hindsight this would not have shown a Level of Service A and would have shown a lower Level of Service, and Mr. O'Brien agreed that this is likely. Mr. Smolow stated that Level of Service in 2007 would have shown a Level of Service D or less, and Mr. O'Brien stated he would not be certain without doing the numbers. Mr. Smolow stated it certainly would have been less than A, and Mr. O'Brien agreed.

Mr. Smolow stated in the 2007 Mr. O'Brien conducted a count of this merging lane that carries traffic from the ramp onto 332 westbound, and Mr. O'Brien agreed. Mr. Smolow stated this is Figure 4 in the 2007 Study, and Mr. O'Brien stated Figure 4 depicts the volume for the weekday afternoon peak hour. Mr. Smolow stated in 2007, the number Mr. O'Brien came up with on the volume for the ramp itself was 822 vehicles per hour and for the merging lane that carries traffic westbound, he came up with 548 vehicles per hour, and Mr. O'Brien agreed.

Mr. Bamburak asked Mr. Smolow if he is trying to tie this in with the Scudders Falls Bridge or with development, and Mr. Smolow stated he is getting to this.

Mr. Smolow stated earlier this evening Mr. O'Brien testified from the 2004 Delaware Valley Study that the Bridge Commission used, and Mr. O'Brien agreed. Mr. Smolow noted Figure 2A on Page 9 of this Study which shows the peak hour traffic volumes for this ramp as of 2004, and it shows the a.m. and p.m. peak hour volumes; and Mr. O'Brien agreed. Mr. Smolow stated for the ramp that Mr. O'Brien showed as having 822 vehicles per hour the Delaware Valley Study shows a ramp volume of 1,135 vehicles per hour and for the right-turn lane that goes westbound that Mr. O'Brien showed having 548 vehicles, the Delaware Valley Study showed 962 vehicles; and Mr. O'Brien agreed. Mr. Smolow stated these are material differences, and Mr. O'Brien agreed and added that there are also differences in other volumes as well including some where he has shown significantly higher volumes than the Bridge Commission Study. Mr. Smolow stated for this ramp that is carrying traffic from the Scudders Falls Bridge there is significantly higher volume in the Bridge Report than there was in Mr. O'Brien's Report, and Mr. O'Brien agreed.

Mr. Smolow noted Mr. O'Brien's 2008 Report where he estimated the proposed incremental additional vehicle traffic that will result if the Hospital is developed; and Mr. O'Brien agreed. Mr. Smolow noted Mr. O'Brien's 2007 Report Figure 7 shows vehicle traffic in the morning without development and if you compare that to Figure 12 there is a difference of 69 vehicles per hour per day that will be added if the Hospital is built, and Mr. O'Brien stated this is correct for the turn movement coming southbound off of the I-95 ramp turning right onto 332. Mr. Smolow stated for the evening count, if the Hospital is developed in 2019 during the weekday afternoon peak hours there will be an additional 34 vehicles per hour, and Mr. O'Brien agreed.

Mr. Smolow stated neither one of those figures took into consideration any increase in traffic from the Scudders Falls Bridge Project, and Mr. O'Brien agreed.

Mr. Smolow stated Mr. O'Brien previously testified that there is already a queuing situation on this ramp from time to time in the evening hours, and if the Hospital is developed and there will be an additional 34 vehicles per hour added to the evening, this will increase the queue levels, and Mr. O'Brien agreed.

Mr. Smolow stated in Mr. O'Brien's 2007 Report it indicates that Aria is not proposing to mitigate that traffic condition, and Mr. O'Brien stated he believes that they are proposing an improvement program to mitigate the impact of the Hospital throughout the Study Area. Mr. Smolow stated there is no particular improvement directed to alleviating the deficient operation of the ramp. Mr. O'Brien stated part of the issue for vehicles turning right off of the ramp is vehicles queuing on 332, and they are proposing improvements to the intersection of 332 and Stony Hill Road to improve those movements. Mr. Smolow stated it is Mr. O'Brien's testimony that an improvement to the intersection approximately one third of a mile away will reduce the queues on the I-95 ramp; and Mr. O'Brien stated this is correct because the queues are not expected to extend as far back and will not block the intersection. Mr. O'Brien stated part of the difficulty in coming off the ramp is the queue extending along 332 from Stony Hill, and they are proposing improvements to that intersection which should reduce the queues at 332.

Mr. Smolow stated they are not proposing any widening of the ramp itself, and Mr. O'Brien stated they are not. Mr. Smolow stated they are not proposing to add any additional traffic signals to the ramp, and Mr. O'Brien agreed. Mr. Smolow stated they do not propose to alter the design or width of the right turn lane, and Mr. O'Brien agreed.

Mr. VanLuvanee stated they have still not heard anything about the Scudders Falls Bridge or the impact of the Bridge.

Mr. DosSantos stated Mr. VanLuvanee has been referring to a 2007 Study and a 2008 Study and he asked if he is talking about the same Study; and Mr. Smolow stated he is and he is not being clear with his language. He stated the traffic counts were taken in 2007 and the Report was prepared in 2008; but he is talking about the same thing.

Mr. Smolow stated in preparing the 2008 Traffic Report, Mr. O'Brien took the background growth rate into consideration, and Mr. O'Brien agreed. Mr. Smolow stated he also surveyed developments in the Study Area, and Mr. O'Brien agreed. Mr. Smolow asked Mr. O'Brien when he looked at the developments in the immediate vicinity, did he look at the status of the Development Plans; and Mr. O'Brien stated the information on the status of the Development Plans was available on the Township Website to which they were referred. Mr. Smolow asked Mr. O'Brien if he considered Plans that were at the Preliminary Plan Application stage, and Mr. O'Brien stated if they were identified on the Website, he did. Mr. Smolow asked if he would take this into consideration because as a traffic engineer he would believe that it would be reasonable to take the incremental increase of traffic from a project into consideration because it was on the Website and at the Preliminary Plan stage; and Mr. O'Brien stated this is correct for Land Developments.

Mr. Smolow noted the 2008 Study, Page 9 under Planned Roadway Improvements which reads, “Through discussions with the Township and review of PennDOT’s Twelve Year Transportation Program, there are no plans to improve any of the Study Area roadways by the Township, PennDOT, or other area developers that would have a significant effect on traffic operations;” and Mr. O’Brien agreed. Mr. Smolow asked Mr. O’Brien when he referred to the “Township,” is it his Testimony that he spoke to only the Township Code Enforcement Officer, and Mr. O’Brien agreed. Mr. Smolow asked if the Code Enforcement Officer mentioned the Scudders Falls Bridge Project, and Mr. O’Brien stated she did not. Mr. Smolow asked Mr. O’Brien if he asked her about it, and Mr. O’Brien stated he did not.

Mr. Smolow asked if Mr. O’Brien would agree that the I-95 segment between the Scudders Falls Bridge and 332 is within the Study Area, and Mr. O’Brien agreed. Mr. Smolow asked Mr. O’Brien if he would agree that the southbound ramp is within the Study Area, and Mr. O’Brien agreed. Mr. Smolow stated if improvements were planned for those areas, they should have been included in his Study, and Mr. O’Brien stated this would depend on when they were expected to be completed. Mr. Smolow stated Mr. O’Brien had indicated that there were “no Plans to improve within the Study Area,” and Mr. O’Brien agreed and added he probably should have continued to say “within the timeframe of the Study.” Mr. Smolow stated they know that Mr. O’Brien did not take the Scudders Falls Bridge Project into consideration, and Mr. O’Brien stated they took it into consideration, but they did not believe it was appropriate to include in the projections.

Mr. Smolow stated Mr. O’Brien did not check with the Delaware River Joint Toll Bridge Commission regarding the status of the Project; and Mr. O’Brien stated while he did not at that time, the information he was aware of was that there was no clear timeframe for when that Project was going to be started. Mr. Smolow stated when Mr. O’Brien wrote his report, he did not check with the Bridge Commission to verify what he had heard, and Mr. O’Brien agreed he did not. Mr. Smolow stated Mr. O’Brien did not go to the Bridge Commission to examine the Project Plans, and Mr. O’Brien stated he did not. He added that since then he has and still agrees that he should not have accounted for that Project because there was still no set construction time and there is still set funding source for that Project. Mr. Smolow stated when Mr. O’Brien prepared his Plan he did not check with the Bridge Commission regarding the status and did not look at the Plans to see what they involved; and Mr. O’Brien agreed that this is correct, and the information he was aware of at the time was that there was no construction date for the Project and no funding source. Mr. Smolow stated Mr. O’Brien did not speak to anyone at the Bridge Commission to determine a source of funding; and Mr. O’Brien stated while he did not do so at that time, he has since then, and there is still no clear funding source for that Project. Mr. Smolow stated Mr. O’Brien did not at the time determine the funding sources, and Mr. O’Brien stated he did not.

Mr. Smolow stated when you take into consideration a Land Development that is within the Study Area to determine the incremental growth rates does he contact the Developers to take their funding into consideration; and Mr. O'Brien stated he does not. Mr. Smolow stated for a relatively small office development he would not care about funding, but with a highway potentially having a significant impact in the community, funding is important; and Mr. O'Brien stated it is very easy to project the impact of a development based on its size and use based on projections from ITE, but for a project such as the Scudders Falls Bridge Project it is not so easy to determine what the impact of that Project will be. He stated at this time, he would still have difficulty projecting the traffic impact of the project. He stated in 2008 when he did the Report there was no tolling that was proposed as part of the Scudders Falls Bridge Project, and there is now tolling that is proposed, and the tolling will certainly have an impact on the traffic volume projections with that Project. He stated it is difficult to project the traffic impact of a project such as the Scudders Falls Bridge Project without having sufficient information, and at that time that specific information was not available, and he believes that it is still not available.

Mr. Smolow stated Mr. O'Brien did not look at the 2004 Bridge Commission Study in preparing his 2008 Study, and Mr. O'Brien stated he did not. Mr. Smolow asked Mr. O'Brien if he would agree that the 2008 Study includes projections as to the impact of the Scudders Fall Bridge Project on the I-95 Segment in Pennsylvania as well as the southbound ramp. Mr. Truelove stated he feels Mr. Smolow means the 2004 Study, and Mr. Smolow agreed he meant the 2004 Study. Mr. Smolow asked Mr. O'Brien if it is not true that the 2004 Delaware Valley Regional Planning Commission Study used by the Bridge Commission contains an analysis of the expected impact of traffic due to the Scudders Falls Bridge Project, and there is an analysis of the build situation versus no build alternative; and Mr. O'Brien stated it has a comparison of projected volumes based on the build versus no build conditions, but it does not indicate when that Project would be completed.

Mr. Smolow stated the 2004 Delaware Valley Study reports that there will be an increase in traffic volume during the a.m. and peak hours during the weekdays when the Scudders Falls Bridge Project is completed; and Mr. O'Brien stated the 2004 Report does show increased traffic volumes but the difficulty is at that point it is his understanding that the Delaware River Joint Toll Bridge Commission did not clearly authorize to move the Project forward, and secondly the traffic impact has changed since they have determined tolling would be part of it. Mr. Smolow stated they have not yet revealed or produced a Report based on the tolling, and Mr. O'Brien agreed. Mr. O'Brien stated it is his understanding that this Report is not available. Mr. Smolow stated Mr. O'Brien does not therefore know the impact, if any, from tolling; and Mr. O'Brien stated while he does not know the specifics, he can refer to the fact that in the 2004 Report on Page 32 it says, "In the Scudders Falls Bridge Corridor most of the increase in traffic between the no build and build alternative is due to diversion from other routes served by the adjacent bridges between Bucks and Mercer County. The additional capacity and corresponding

reduction in congestion increases the attractiveness of the Scudders Falls Bridge relative to the other River-crossing facilities.” Mr. O’Brien stated this is impacted by tolling, and if this Bridge is tolled, depending on the amount of the toll, it will decrease the attractiveness of this Bridge.

Mr. Smolow stated Mr. O’Brien has no idea whether or not there is going to be tolling, and Mr. O’Brien stated it is his understanding based on information he got from the Website that as of December, 2009 tolling was proposed to finance the Project. Mr. Smolow stated it was proposed, but it was not acted upon; and Mr. O’Brien agreed that it is not clear at this time. Mr. O’Brien stated there are many aspects of the Project that are unclear. Mr. Smolow asked Mr. O’Brien if it is not true that there has been no decision to toll the Project, and Mr. O’Brien stated it is his understanding that it has only been proposed. Mr. Smolow stated Mr. O’Brien has not seen any report showing what, if any, impact there would be even if it’s adopted, and Mr. O’Brien agreed.

There was discussion on when this matter should be heard next. Mr. Bamburak stated December 6 is already full, and he noted they have been trying to hold the second meeting of the month for Aria, and January 17 is available. Ms. Kirk stated because of the volume of cases and Applications that come before the Board, they have been setting aside the second meeting of the month strictly for this Remand Hearing. Mr. Smolow asked about December 20, but it was noted not everyone would be available that evening. It was agreed to continue the matter to January 17, 2012.

Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to continue the matter to January 17, 2012.

Mr. VanLuvanee stated this is more than forty-five days, but he would agree to stipulate to an extension of time since he is not available on December 20.

Ms. Kirk agreed to put together a list of Exhibits that were presented at the prior Hearings prior to the meeting on January 17 and will circulate it among counsel to make sure they are in agreement with it before making it available to the Board.

There being no further business, Mr. Gruen moved, Mr. DosSantos seconded and it was unanimously carried to adjourn the meeting at 10:15 p.m.

Respectfully Submitted,

Jerry Gruen, Secretary